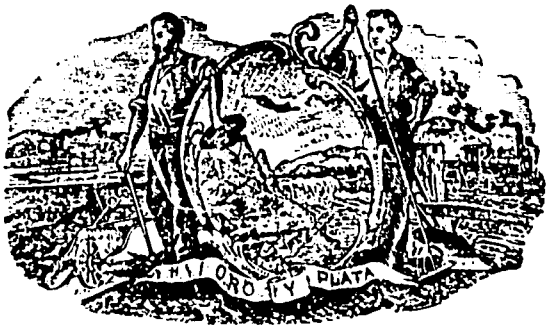
# Laws and Resolutions

# OF THE

# STATE OF MONTANA




**ENACTED BY THE**

**Fifty-First Legislature**

**In Regular and**

**Special Session**

**Held at Helena, the Seat of Government**
**January 2, 1989 to April 21, 1989**
**June 1989**

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# SESSION LAWS

## ENACTED BY THE

**Fifty-First Legislature**

**IN REGULAR and**

**SPECIAL SESSION**

**STATE OF MONTANA**

**1989**

EXPLANATORY NOTE:

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.

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# OFFICERS AND MEMBERS OF THE MONTANA SENATE 1989

50 Members

27 Republicans — 23 Democrats

## OFFICERS

President . . . . . Jack E. Galt
President Pro Tempore . . . . . Matt Himsl
Majority Leader . . . . . Delwyn Gage
Majority Whip . . . . . Bill Farrell
Minority Leader . . . . . Bill Norman
Minority Whip . . . . . Judy Jacobson
Secretary of the Senate . . . . . John Larson

## MEMBERS

| | Name | Residence or Mailing Address | Dist. No. | County of Residence | Party |
|---|---|---|---|---|---|
| * | Abrams, Hubert J. | South Route, Wibaux 59353 | 12 | Wibaux | Democratic |
| * | Aklestad, Gary C. | P.O. Box 32, Galata 59444 | 6 | Toole | Republican |
| | Anderson, John H., Jr. | P.O. Box 86, Alder 59710 | 37 | Madison | Republican |
| * | Beck, Tom | 651 Greenhouse Road, Deer Lodge 59722 | 24 | Powell | Republican |
| | Bengtson, Esther G. | 8124 Clark Road, Shepherd 59079 | 49 | Yellowstone | Democratic |
| * | Bishop, Al | Transwestern II Bldg., Suite 101, Billings 59101 | 46 | Yellowstone | Republican |
| * | Blaylock, Chet | 502 3rd Ave., Laurel 59044 | 43 | Yellowstone | Democratic |
| * | Boylan, Paul F. | 3747 So. 19th Road, Bozeman 59715 | 39 | Gallatin | Democratic |
| | Brown, Bob | 333 Cougar Trail, Whitefish 59937 | 2 | Flathead | Republican |
| | Crippen, Bruce D. | P.O. Box 22069, Billings 59104 | 45 | Yellowstone | Republican |
| | Devlin, Gerry | P.O. Box 186, Terry 59349 | 13 | Prairie | Republican |
| | Eck, Dorothy | 10 W. Garfield, Bozeman 59715 | 40 | Gallatin | Democratic |
| | Farrell, William E. | 12255 Flora Drive, Missoula 59801 | 31 | Missoula | Republican |
| * | Gage, Delwyn | P.O. Box 787, Cut Bank 59427 | 5 | Glacier | Republican |
| * | Galt, Jack E. | Martinsdale 59053 | 16 | Meagher | Republican |
| | Hager, Tom | 150 Norris Court, Billings 59105 | 48 | Yellowstone | Republican |
| * | Halligan, Mike | P.O. Box 9121, Missoula 59807 | 29 | Missoula | Democratic |
| | Hammond, H. W. "Swede" | P.O. Box 1366, Malta 59538 | 9 | Phillips | Republican |
| | Harding, Ethel M. | P.O. Box 251, Polson 59860 | 25 | Lake | Republican |
| | Harp, John G. | 53 Willow Drive, Kalispell 59901 | 4 | Flathead | Republican |
| * | Himsl, Matt | 305 4th Ave E, Kalispell 59901 | 3 | Flathead | Republican |
| * | Hofman, Sam | 6210 Camp Creek Road, Manhattan 59741 | 38 | Gallatin | Republican |
| | Jacobson, Judy H. | 330 Blacktail Canyon Road, Butte 59701 | 36 | Silver Bow | Democratic |
| * | Jenkins, Loren | RR 1 Box 689, Big Sandy 59520 | 7 | Chouteau | Republican |
| * | Jergeson, Greg | Route 71 Box 8, Chinook 59523 | 8 | Blaine | Democratic |
| | Keating, Thomas F. | P.O. Box 20522, Billings 59104 | 44 | Yellowstone | Republican |
| * | Lynch, John "J.D." | 532 W. Mercury, Butte 59701 | 34 | Silver Bow | Democratic |
| * | Manning, Richard E. | 810 7th Ave No., Great Falls 59401 | 18 | Cascade | Democratic |
| | Mazurek, Joseph P. | 516 Hayes, Helena 59601 | 23 | Lewis & Clark | Democratic |
| * | McLane, Harry H. "Doc" | P.O. Box 312, Laurel 59044 | 42 | Yellowstone | Republican |
| * | Meyer, Darryl | 5306 4th Ave So., Great Falls 59405 | 17 | Cascade | Republican |
| | Nathe, Dennis G. | P.O. Box 4, Redstone 59257 | 10 | Sheridan | Republican |
| | Noble, Jerry | 1540 Meadowlark Drive #55, Great Falls 59404 | 21 | Cascade | Republican |
| * | Norman, Bill | 440 Connell Ave., Missoula 59801 | 28 | Missoula | Democratic |
| | Pinsoneault, R.J. "Dick" | P.O. Box 250, St. Ignatius 59865 | 27 | Lake | Democratic |
| | Pipinich, Bob | 4430 Hwy. 200 Marshall Grade, Missoula 59802 | 33 | Missoula | Democratic |
| | Rapp-Svrcek, Paul | P.O. Box 1392, Thompson Falls 59873 | 26 | Sanders | Democratic |
| * | Rasmussen, Tom | 1353 Rimini Road, Helena 59601 | 22 | Lewis & Clark | Republican |
| * | Regan, Pat | 204 Mountain View, Billings 59101 | 47 | Yellowstone | Democratic |
| * | Severson, Elmer D. | 480 Middle Burnt Fork Road, Stevensville 59870 | 32 | Ravalli | Republican |
| | Stimatz, Lawrence G. | 1615 C Street, Butte 59701 | 35 | Silver Bow | Democratic |
| * | Story, Peter R. | P.O. Box 355, Emigrant 59027 | 41 | Park | Republican |
| | Thayer, Gene | 2612 4th Ave. So., Great Falls 59405 | 19 | Cascade | Republican |
| | Tveit, Larry J. | Route 1 Box 1475, Fairview 59221 | 11 | Richland | Republican |
| | Van Valkenburg, Fred | 219 University, Missoula 59801 | 30 | Missoula | Democratic |
| * | Vaughn, Eleanor L. | P.O. Box 45, Libby 59923 | 1 | Lincoln | Democratic |
| * | Walker, Mike | 965 Avenue E NW, Great Falls 59404 | 20 | Cascade | Democratic |
| * | Weeding, Cecil | P.O. Box 78, Jordan 59337 | 14 | Garfield | Democratic |
| | Williams, Bob | P.O. Box 390, Hobson 59452 | 15 | Judith Basin | Democratic |
| | Yellowtail, Bill | P.O. Box 308, Wyola 59089 | 50 | Big Horn | Democratic |

* Term expires January, 1991 — All other terms expire January, 1993



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# OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES 1989

100 Members

52 Democrats 48 Republicans

## OFFICERS

Speaker.....John Vincent
Speaker Pro Tempore.....Kelly Addy
Majority Leader.....Hal Harper
Majority Whip.....Joe Quilici
Minority Leader.....Jack Ramirez
Minority Whip.....John Mercer
Chief Clerk of the House.....Larry Fasbender

## MEMBERS

| Name | Residence or Mailing Address | Dist. No. | County of Residence | Party |
|---|---|---|---|---|
| Aafedt, Ole | 500 34th St. So., Great Falls 59405 | 34 | Cascade | Republican |
| Addy, Kelly | 220 Parkhill Drive, Billings 59101 | 94 | Yellowstone | Democratic |
| Bachini, Bob | 409 19th St., Havre 59501 | 14 | Hill | Democratic |
| Bardanouve, Francis | P.O. Box 367, Harlem 59526 | 16 | Blaine | Democratic |
| Blotkamp, Robert "Robb" | 2 Deer Park, Anaconda 59711 | 66 | Deer Lodge | Democratic |
| Boharski, Wm. E. | P.O. Box 2965, Kalispell 59901 | 4 | Flathead | Republican |
| Bradley, Dorothy M. | 919 W. Lamme, Bozeman 59715 | 79 | Gallatin | Democratic |
| Brooke, Vivian M. | 1610 Madeline Ave., Missoula 59801 | 56 | Missoula | Democratic |
| Brown, Dave | 3040 Ottawa, Butte 59701 | 72 | Silver Bow | Democratic |
| Brown, Jan | 906 Madison Ave., Helena 59601 | 46 | Lewis & Clark | Democratic |
| Campbell, Bud | 471 Lake Hill Road, Deer Lodge 59722 | 48 | Powell | Republican |
| Clark, Robert C. | P.O. Box 262, Ryegate 59074 | 31 | Golden Valley | Republican |
| Cobb, John | P.O. Box 388, Augusta 59410 | 42 | Lewis & Clark | Republican |
| Cocchiarella, Vicki | 535 Livingston Ave., Missoula 59801 | 59 | Missoula | Democratic |
| Cody, Dorothy A. | P.O. Box 973, Wolf Point 59201 | 20 | Roosevelt | Democratic |
| Cohen, Ben | P.O. Box 1657, Whitefish 59937 | 3 | Flathead | Democratic |
| Compton, Duane W. | P.O. Box 1061, Malta 59538 | 17 | Phillips | Republican |
| Connelly, Mary Ellen | 3315 Whitefish Stage, Kalispell 59901 | 8 | Flathead | Democratic |
| Daily, Fred "Fritz" | 1057 W. Steel, Butte 59701 | 69 | Silver Bow | Democratic |
| Darko, Paula A. | P.O. Box 490, Libby 59923 | 2 | Lincoln | Democratic |
| Davis, Ervin | P.O. Box 63, Charlo 59824 | 53 | Lake | Democratic |
| DeBruycker, Roger | RR 1 Box 8, Floweree 59440 | 13 | Chouteau | Republican |
| DeMars, Gene | RR 1 Box 22, Coffee Creek 59424 | 29 | Fergus | Democratic |
| Driscoll, Jerry L. | 4344 Stone St., Billings 59101 | 92 | Yellowstone | Democratic |
| Elliott, Jim | 100 Trout Creek Road, Trout Creek 59874 | 51 | Sanders | Democratic |
| Ellison, Orval S. | HC 59 Box 106, McLeod 59052 | 81 | Park | Republican |
| Eudaily, Ralph S. | 234 Kensington Ave., Missoula 59801 | 60 | Missoula | Republican |
| Gervais, Floyd "Bob" | P.O. Box 1810, Browning 59417 | 9 | Glacier | Democratic |
| Giacometto, Leo A. | P.O. Box 1, Alzada 59311 | 24 | Carter | Republican |
| Gilbert, Bob | P.O. Drawer 1228, Sidney 59270 | 22 | Richland | Republican |
| Glaser, William E. | P.O. Box 1801, Billings 59103 | 98 | Yellowstone | Republican |
| Good, M. Susan | 2717 3rd Ave No., Great Falls 59401 | 36 | Cascade | Republican |
| Gould, R. Budd | 2205 So. Fifth West, Missoula 59801 | 61 | Missoula | Republican |
| Grady, Edward J. | Star Route, Canyon Creek 59633 | 47 | Lewis & Clark | Republican |
| Grinde, Larry Hal | Route 3, Lewistown 59457 | 30 | Fergus | Republican |
| Guthrie, Bert | P.O. Box 541, Choteau 59422 | 11 | Teton | Republican |
| Hannah, Thomas E. | 2228 Beloit, Billings 59102 | 86 | Yellowstone | Republican |
| Hansen, Stella Jean | 841 Woodford, Missoula 59801 | 57 | Missoula | Democratic |
| Hanson, Marian W. | P.O. Box 237, Ashland 59003 | 100 | Powder River | Republican |
| Harper, Hal | 9 Comstock Road, Helena 59601 | 44 | Lewis & Clark | Democratic |
| Harrington, Dan W. | 1201 No. Excelsior, Butte 59701 | 68 | Silver Bow | Democratic |
| Hayne, Harriet | P.O. Box 285, Dupuyer 59432 | 10 | Pondera | Republican |
| Hoffman, Robert E. | P.O. Box 306, Sheridan 59749 | 74 | Madison | Republican |
| Iverson, Dennis | Whitlash 59545 | 12 | Liberty | Republican |
| Johnson, John | 124 Gresham, Glendive 59330 | 23 | Dawson | Democratic |



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# HOUSE OF REPRESENTATIVES
# (Continued)

| Name | Residence or Mailing Address | Dist. No. | County of Residence | Party |
|---|---|---|---|---|
| Kadas, Mike | 922 Taylor, Missoula 59802 | 55 | Missoula | Democratic |
| Kasten, Betty Lou | SR 277 Box A-14, Brockway 59214 | 28 | McCone | Republican |
| Keller, Vernon V. | HC 55 Box 355, Fishtail 59028 | 83 | Stillwater | Republican |
| Kilpatrick, Thomas E. | 814 1st Ave., Box 546, Laurel 59044 | 85 | Yellowstone | Democratic |
| Kimberley, Bervyl C. "Berv" | 2511 Wyoming Ave., Billings 59102 | 90 | Yellowstone | Democratic |
| Knapp, Roger | P.O. Box 8, Hysham 59038 | 27 | Treasure | Republican |
| Koehnke, Francis | P.O. Box 692, Townsend 59644 | 32 | Broadwater | Democratic |
| Lee, Thomas N. | East Lake Shore, Bigfork 59911 | 49 | Lake | Republican |
| Marks, Robert L. | 302 Lump Gulch, Clancy 59634 | 75 | Jefferson | Republican |
| McCormick, Lloyd J. "Mac" | 326 14th Ave So. #2, Great Falls 59405 | 38 | Cascade | Democratic |
| McDonough, Mary | 816 Parkhill Drive, Billings 59102 | 89 | Yellowstone | Democratic |
| Menahan, William "Red" | 1304 W. 5th St., Anaconda 59711 | 67 | Deer Lodge | Democratic |
| Mercer, John A. | P.O. Box 450, Polson 59860 | 50 | Lake | Republican |
| Moore, Janet | P.O. Box 1017, Condon 59826 | 65 | Missoula | Democratic |
| Nelson, Linda J. | HC 51 Box 30, Medicine Lake 59247 | 19 | Sheridan | Democratic |
| Nelson, Richard M. | 94 Northern Light Blvd., Kalispell 59901 | 6 | Flathead | Republican |
| Nelson, Thomas E. | 1116 Moon Valley Road, Billings 59105 | 95 | Yellowstone | Republican |
| Nisbet, Jerry | 1401 Park Gate Road, Great Falls 59404 | 35 | Cascade | Democratic |
| O'Connell, Helen G. | 703 4th Ave. S., Great Falls 59404 | 40 | Cascade | Democratic |
| O'Keefe, Mark | 531 Power St., Helena 59601 | 45 | Lewis & Clark | Democratic |
| Owens, Gaylon F. "Lum" | 535 W. California, Kalispell 59901 | 7 | Flathead | Republican |
| Patterson, John W. | P.O. Box 150, Custer 59024 | 97 | Yellowstone | Republican |
| Pavlovich, Robert J. | 1375 Harrison Ave., Butte 59701 | 70 | Silver Bow | Democratic |
| Peck, Ray | 729 4th Ave, Havre 59501 | 15 | Hill | Democratic |
| Peterson, Mary Lou | Route 1 Box 117, Eureka 59917 | 1 | Lincoln | Republican |
| Phillips, John E. | 1200 32nd St. So., #61, Great Falls 59405 | 33 | Cascade | Republican |
| Quilici, Joe | 3040 Kossuth, Butte 59701 | 71 | Silver Bow | Democratic |
| Ramirez, Jack | 4042 Pine Cove Road, Billings 59106 | 87 | Yellowstone | Republican |
| Raney, Bob | 212 So. 6th St., Livingston 59047 | 82 | Park | Democratic |
| Ream, Robert R. | 5950 Wildcat Road, Missoula 59802 | 54 | Missoula | Democratic |
| Rehberg, Dennis R. | 4401 Highway 3, Billings 59106 | 88 | Yellowstone | Republican |
| Rice, Jim | 1525 Williamsburg Road, Helena 59601 | 43 | Lewis & Clark | Republican |
| Roth, Rande K. | 726 Oasis Drive, Billings 59105 | 96 | Yellowstone | Republican |
| Russell, Angela | P.O. Box 333, Lodge Grass 59050 | 99 | Big Horn | Democratic |
| Schye, Ted E. | North Star Route, Glasgow 59230 | 18 | Valley | Democratic |
| Simon, Bruce T. | 217 Clark Ave., Billings 59101 | 91 | Yellowstone | Republican |
| Simpkins, Richard D. | 1221 Park Garden Road, Great Falls 59404 | 39 | Cascade | Republican |
| Smith, Clyde B. | 148 3-Mile Drive, Kalispell 59901 | 5 | Flathead | Republican |
| Spaeth, Gary L. | P.O. Box 193, Joliet 59041 | 84 | Carbon | Democratic |
| Spring, Wilbur, Jr. | 2383 Penwell Bridge Road, Belgrade 59714 | 77 | Gallatin | Republican |
| Squires, Carolyn | 2111 So. 10th St. W., Missoula 59801 | 58 | Missoula | Democratic |
| Stang, Barry "Spook" | 142 Montana Hwy. 135 So., St. Regis 59866 | 52 | Mineral | Democratic |
| Steppler, Don | P.O. Box 429, Brockton 59213 | 21 | Richland | Democratic |
| Stickney, Jessica | 2206 Main St., Miles City 59301 | 26 | Custer | Democratic |
| Strizich, Bill | 736 27th Ave. NE, Great Falls 59404 | 41 | Cascade | Democratic |
| Swift, Bernie | SE 206 Rose Lane, Hamilton 59840 | 64 | Ravalli | Republican |
| Swysgood, Chuck | 506 So. Atlantic, Dillon 59725 | 73 | Beaverhead | Republican |
| Thoft, Bob | 1520 So. Burnt Fork Road, Stevensville 59870 | 63 | Ravalli | Republican |
| Thomas, Fred | 144 Brook Lane, Stevensville 59870 | 62 | Ravalli | Republican |
| Vincent, John | 1020 So. 3rd, Bozeman 59715 | 80 | Gallatin | Democratic |
| Wallin, Norm | 2422 Springcreek Drive, Bozeman 59715 | 78 | Gallatin | Republican |
| Westlake, Vernon L. | 3186 Love Lane, Bozeman 59715 | 76 | Gallatin | Democratic |
| Whalen, Timothy J. | 101 Avenue C, Billings 59101 | 93 | Yellowstone | Democratic |
| Wyatt, Diana E. | 300 31st St So., Great Falls 59405 | 37 | Cascade | Democratic |
| Zook, Tom | c/o Broadus Stage, Miles City 59301 | 25 | Custer | Republican |



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# Laws and Resolutions

# OF THE

# STATE OF MONTANA

**ENACTED BY THE**

Fifty-First Legislature

In Regular

Session

**Held at Helena, the Seat of Government**

**Regular Session**

**January 2, 1989, to April 21, 1989**

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**COMPILED BY MONTANA LEGISLATIVE COUNCIL**

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# SESSION LAWS

ENACTED BY THE

## Fifty-First Legislature

## IN REGULAR

## SESSION

## STATE OF MONTANA

## 1989

EXPLANATORY NOTE:

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.

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# SESSION LAWS

## CHAPTER NO. 1

[HB 48]

AN ACT TO AUTHORIZE LEGISLATORS TO SELECT AN ALTERNATIVE METHOD OF REMUNERATION DURING A LEGISLATIVE SESSION; AMENDING SECTIONS 5-2-301 AND 5-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-2-301, MCA, is amended to read:

**"5-2-301. Compensation and expenses for members while in session.** (1) *Except as provided in subsection (7), legislators* are entitled to a salary commensurate to that of the daily rate of a grade 8, step 2, classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Legislators are entitled to $50 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(4) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(5) In addition to the mileage allowance provided for in subsection (4), legislators, upon submittal of an appropriate claim for such mileage reimbursement to the office of the legislative council, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) such additional round trips as are authorized by the legislature during special session.

(6) Legislators are not entitled to any additional mileage allowance under subsection (4) for a special session if it is convened within 7 days of a regular session.



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*(7) In lieu of the salary provided for in subsection (1) and the expense allowance provided for in subsection (3), a legislator may receive remuneration for services performed during a legislative session. A legislator choosing to receive remuneration for services performed shall file a request to receive payment under this subsection with the accounting office of the legislative council. A legislator exercising the option to receive remuneration for services performed may not receive more remuneration than legislators paid pursuant to subsections (1) and (3). Remuneration for services performed must be reduced $50 a day when the legislature recesses for more than 3 days."*

Section 2. Section 5-2-302, MCA, is amended to read:

**"5-2-302. Compensation and expenses when legislature not in session.** When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one full day's pay at the rate of a classified state employee, described in 5-2-301*(1)* for each 24-hour period of time (from midnight to midnight), or portion thereof, spent away from home on authorized legislative business. However, if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, he may not be compensated for the additional day."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Section 4. **Retroactive applicability.** [This act] applies retroactively within the meaning of 1-2-109, to January 1, 1989.

Approved January 10, 1989.

# CHAPTER NO. 2

[HB 65]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE 51ST LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** The following amounts are appropriated from the general fund for fiscal years 1989, 1990, and 1991 for the operation of the 51st legislature and costs of preparing for the 52nd legislature:

House of Representatives $2,286,867

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| | |
|---|---|
| Senate | $1,370,951 |
| Legislative Council | $611,876 |

Section 2. **Computer system planning.** It is the intent of the legislature that money appropriated by [this act] may be used for the expansion or enhancement of computer equipment or systems only in accordance with a plan developed jointly by the house of representatives, the senate, and other agencies of the legislative branch. It is the further intent of the legislature that the legislative branch plan be developed in cooperation with the department of administration to enhance compatibility with the long-term plan for state government.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved January 12, 1989.

# CHAPTER NO. 3

[HB 16]

AN ACT PERMITTING PUBLIC ACCOMMODATIONS TO PROVIDE SPECIAL BENEFITS, INCENTIVES, DISCOUNTS, AND PROMOTIONS FOR PERSONS BASED ON AGE; AND AMENDING SECTION 49-2-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 49-2-304, MCA, is amended to read:

**"49-2-304. Discrimination in public accommodations.** *(1)* Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

*(a)* to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin;

*(b)* to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin.

*(2) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved January 31, 1989.

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# CHAPTER NO. 4

[HB 18]

AN ACT TRANSFERRING THE MONTANA AGRICULTURE DEVELOPMENT COUNCIL FROM THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF AGRICULTURE; AMENDING SECTION 2-15-1817, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1817, MCA, is amended to read:

"**2-15-1817. Montana agriculture development council.** (1) There is a Montana agriculture development council. The council is allocated to the department of *agriculture* for administrative purposes only, as provided in 2-15-121.

(2) The council is composed of seven members appointed by the governor, including the director of the department of agriculture, the director of the department of commerce, and five members who are or have been actively engaged in agriculture. Members shall serve staggered 3-year terms commencing on July 1 of each year of appointment."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved February 4, 1989.

# CHAPTER NO. 5

[HB 41]

THE INTERSTATE EMERGENCY SERVICES MUTUAL AID ACT; PROVIDING FOR INTERSTATE MUTUAL AID AGREEMENTS BETWEEN FIRE PROTECTION SERVICES, EMERGENCY MEDICAL CARE PROVIDERS, LOCAL GOVERNMENT SUBDIVISIONS, AND THE UNITED STATES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] shall be known and may be cited as the "Interstate Emergency Services Mutual Aid Act".

Section 2. **Purpose.** It is the purpose of [this act] to permit one or more fire protection services, emergency medical care providers, or local

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government subdivisions of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States in order to facilitate and coordinate efficient, cooperative firefighting efforts directed toward protection of life and property in areas transcending state boundaries that, due to geographic remoteness, population sparsity, and economic or other factors, are in need of such services.

Section 3. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Emergency medical care provider" means a local government subdivision or other entity, whether public or private, licensed by the state to provide emergency medical services pursuant to Title 50, chapter 6.

(2) "Fire protection service" means a paid or volunteer fire department, fire company, or other fire suppression entity organized under the laws of this state, any party state, or an agency of the government of the United States.

(3) "Local government subdivision" means the local governmental entity, other than state government, including but not limited to incorporated towns and cities, townships, and counties.

(4) "Mutual aid agreement" or "agreement" means an agreement, consistent with the purposes of [this act], by one or more fire protection services, emergency medical care providers, or local government subdivisions of this state with one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States.

(5) "Party emergency service" means a fire protection service, emergency medical care provider, local government subdivision, or agency of the United States that is a party to a mutual aid agreement as set forth in [this act].

Section 4. **Authorization to enter agreement — general content — authority.** (1) Any one or more fire protection services, emergency medical care providers, or local government subdivisions of this state may enter into a mutual aid agreement with any one or more fire protection services, emergency medical care providers, or local government subdivisions of any other state or the United States to provide emergency services to the area covered by the agreement. The agreement must be authorized and approved by the governing body of each party to the agreement that is not an agency of the United States government.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) A mutual aid agreement grants a fire protection service or emergency medical care provider of this state authority to operate outside of the state and grants authority for a fire protection service or emergency medical care provider of another state or the United States to operate within this state as if the fire service or emergency medical care provider were organized and operated under the laws of this state.

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Section 5. **Detailed content of agreement.** The agreement authorized by [section 4] must specify the following:

(1) the purpose of the agreement;

(2) the precise organization, composition, and nature of any separate legal entity created by the agreement;

(3) the duration of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) a provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(6) the exact chain of command or delegation of authority to be followed by party emergency services acting under the provisions of the agreement;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(8) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

Section 6. **Right of state in actions involving agreements.** In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more fire protection services, emergency medical care providers, or local government subdivisions of this state and one or more fire protection services, emergency medical care providers, or local government subdivisions of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any fire protection service, emergency medical care provider, or local government subdivision whose default, failure, performance, or other conduct caused or contributed to a liability incurred by the state.

Section 7. **Agreement not to relieve agency of duties.** No agreement made under [this act] may relieve any fire protection service, emergency medical care provider, or local government subdivision of this state of a duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

Section 8. **Limitation of powers.** Except for the right granted by [this act] to jointly exercise powers, [this act] does not authorize any fire protection service, emergency medical care provider, or local government subdivision of this state to exercise a power that it is not otherwise authorized to exercise.

Section 9. **Submission of agreement to attorney general.** (1) As a condition precedent to an agreement becoming effective under [this act], the agreement must be submitted to and receive the approval of the state attorney general.

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(2) The attorney general shall approve an agreement submitted to him under [this act] unless he finds that it is not in proper form, does not meet the requirements set forth in [this act], or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the appropriate governing bodies of the fire protection services, emergency medical care providers, and local government subdivisions.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved.

Section 10. **Filing of agreement.** Within 20 days after approval by the attorney general, an agreement made pursuant to [this act] must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

Section 11. **Authorization to appropriate funds for purpose of agreement.** A fire protection service, emergency medical care provider, or local government subdivision of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

Section 12. **Effect of other law.** The procedures and remedies provided in [this act] apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

Section 13. **Effective date.** [This act] is effective on passage and approval.

Approved February 4, 1989.

# CHAPTER NO. 6

[HB 85]

AN ACT TO PROVIDE THAT THE DESIGNATION OF A PUBLIC TIME AND PLACE TO OPEN SPECIAL IMPROVEMENT DISTRICT BIDS IS TO BE SET FORTH IN THE NOTICE INVITING BID PROPOSALS; AND AMENDING SECTION 7-12-4142, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-12-4142, MCA, is amended to read:

**"7-12-4142. Opening of bids.** The bids shall be opened in public at a time and place to be designated by the city council *in the notice inviting bid proposals made pursuant to 7-12-4141.*"

Approved February 10, 1989.

# CHAPTER NO. 7

[HB 67]

AN ACT REQUIRING THE ENTRY OF ONLY THE RESOLUTION ADOPTING A MUNICIPAL BUDGET IN THE OFFICIAL MINUTES OF A CITY COUNCIL OR CITY COMMISSION; CLARIFYING THAT THE BUDGET BE KEPT WITH MUNICIPAL RECORDS; AMENDING SECTION 7-6-4231, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-4231, MCA, is amended to read:

**"7-6-4231. Final budget — approval, adoption, and amendment.** (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized and the fund out of which it is to be paid, shall set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter *the resolution* at length in the official minutes of the council. *The clerk shall keep a copy of the budget with the resolution in the official records of the municipality.*

(3) (a) Subject to compliance with the procedures set forth in subsection (4), the council may approve and adopt a resolution amending a final budget when:

(i) shortfalls in anticipated and budgeted revenues occur that, unless reductions in appropriations are made, will result in expenditures for the year exceeding actual revenues and cash balances available therefor; or

(ii) savings result from unanticipated adjustments in projected expenditures.

(b) Amended appropriations must be classified as:

(i) salaries and wages;

(ii) maintenance and operation;

(iii) capital outlay;

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(iv) interest and debt redemption; or

(v) miscellaneous.

(4) Prior to amending a final budget, the council shall:

(a) hold a public hearing on the proposed amendments at least 7 days prior to a vote on the resolution amending the budget; and

(b) publish notice at least once in a newspaper of general circulation in the city or town at least 6 but not more than 16 days before the hearing on the budget amendments. The published notice must specify the date, time, place, and subject of the hearing."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved February 10, 1989.

# CHAPTER NO. 8

[HB 3]

AN ACT CLARIFYING THE TAXATION OF GASOLINE EXPORTED FROM MONTANA; AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-209, 15-70-221, AND 15-70-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR RULEMAKING AUTHORITY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-201, MCA, is amended to read:

**"15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.

(3) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a

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refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

*(d) any exporter as defined in subsection (8);*

*(e)* any dealer licensed as of January 1, 1969, except a dealer at an established airport;

*(f)* any person in Montana who blends alcohol with gasoline.

(7) "Export" means *to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.*

*(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.*

*(9)* "Gasohol" means all products commonly or commercially known or sold as gasohol, used for the purpose of effectively and efficiently operating internal combustion engines, consisting of not less than 10% anhydrous ethanol produced in Montana from Montana agricultural products, including Montana wood or wood products.

*(10)* "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301.

*(11)* "Import" includes and means to receive into any person's possession or custody first after its arrival and coming to rest at destination within

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the state of any gasoline shipped or transported into this state from point of origin without this state other than in the fuel supply tank of a motor vehicle.

*(12)* "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

*(13)* "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

*(14)* "Use" includes and means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision thereof."

Section 2. Section 15-70-202, MCA, is amended to read:

**"15-70-202. License, fee, and security of gasoline distributors.** (1) All gasoline distributors, *including exporters as defined in 15-70-201(8),* prior to the commencement of doing business, shall file an application for a license with the department of revenue on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

(2) Any person who engages in the wholesale distribution of gasoline in this state exercising the option under 15-70-201(6)(c) shall pay an annual license fee of $200 and upon renewal of the license shall pay an annual fee of $200.

(3) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under such conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation."

Section 3. Section 15-70-204, MCA, is amended to read:

**"15-70-204. Gasoline license tax — rate.** (1) Every distributor shall pay to the department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which shall be allocated to the department of commerce as provided by 67-1-301, as amended, and 20 cents for each gallon of all other gasoline distributed by him within the

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state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported shall not be included in the measure of the distributor's license tax.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 4. Section 15-70-209, MCA, is amended to read:

**"15-70-209. Information reports.** (1) Any person receiving gasoline, including every *exporter*, common carrier, private carrier, and contract carrier of property who shall haul, receive, transport, or ship any gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of revenue, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of such products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) In case of any person, except licensed distributors *or exporters*, who refuses or fails to file a statement as herein provided for, there is hereby imposed a penalty of $25 for each failure or refusal; provided, however, that if any person shall establish to the satisfaction of the department that his failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty."

Section 5. Section 15-70-221, MCA, is amended to read:

**"15-70-221. Refund authorized.** (1) Any person who shall purchase and use any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol or operating or propelling stationary gasoline engines, tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such refund or drawback should in no instance exceed the tax paid or to be paid to the state and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the department of commerce by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

*(3) Any person who purchases and exports for sale, use, or consumption outside Montana any gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax so paid upon completion of the information reports required under 15-70-209 and presentation to the department of such other proof of delivery outside Montana as it may by rule require."*

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Section 6. Section 15-70-222, MCA, is amended to read:

"**15-70-222. Required records.** (1) Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim.

(2) If separate storage tanks are maintained on claimant's premises for use in licensed vehicles and in unlicensed equipment, the bulk delivery invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided refunds are claimed only on the number of gallons delivered into the unlicensed equipment tank. Withdrawal of gasoline from the unlicensed vehicle tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(3) Special storage facilities used for certain periods must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(4) Service stations, bulk dealers, and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

(5) When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department of revenue.

(6) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership if such person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) total gallons of gasoline used in each vehicle;

(c) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources.

*(7) An exporter or any other person who transports gasoline out of Montana for sale, use, or consumption outside of Montana shall maintain detailed and contemporaneous records of withdrawal, transportation, ownership, and delivery of the gasoline to destinations outside of Montana as required by the department of revenue.*"

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective date.** [Section 7 and this section] are effective on passage and approval.

Approved February 10, 1989.

# CHAPTER NO. 9

[HB 34]

AN ACT TO REQUIRE THE DEPARTMENT OF REVENUE TO PROCESS NOTIFICATIONS OF CLASSIFICATION, APPRAISAL, AND ASSESSMENT TO TAXPAYERS THROUGH ITS AGENT COUNTY ASSESSORS; TO AUTHORIZE THE DEPARTMENT'S AGENTS TO PROVIDE CERTAIN ASSESSMENT INFORMATION TO TAXING AUTHORITIES; AMENDING SECTIONS 15-7-102, 15-10-202, 15-10-206, AND 15-15-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-7-102, MCA, is amended to read:

**"15-7-102. Notice of classification and appraisal to owners — appeals.** (1) It shall be the duty of the department of revenue, *through its agent as specified in subsection (2),* to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased by him and the appraisal of the improvements thereon only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) The *county assessor shall assign each assessment to the correct owner or purchaser under contract for deed and mail the* notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of his property and of changes over the prior tax year.

(3) If the owner of any land and improvements is dissatisfied with the appraisal or classification of his land or improvements, he may submit his objection in writing to the department's agent. The department shall give reasonable notice to *the* taxpayer of the time and place of hearing and hear

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any testimony or other evidence *that* the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at *the* hearing. Thereafter, the department shall determine the true and correct appraisal and classification of *the* land or improvements and notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When so determined, the land shall be classified and improvements appraised in the manner ordered by the department.

(4) Whether a hearing as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make *the* records available for inspection during regular office hours.

(6) If any property owner shall feel aggrieved at the classification and/or the appraisal made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the proper court or courts. While the property owner may appeal the base year valuation and classification determination, the property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study. The property owner may not appeal the stratum or area designations as specified in 15-7-111."

Section 2. Section 15-10-202, MCA, is amended to read:

**"15-10-202. Certification of taxable values and millage rates.** At the time that the assessment roll is prepared and published, the department of revenue *or its agent* shall certify to each taxing authority the taxable value within the jurisdiction of the taxing authority. The department *or its agent* shall also send to each taxing authority a written statement of its best estimate of the total assessed value of all new construction and improvements not included on the previous assessment roll and the value of deletions from the previous assessment roll. Exclusive of new construction, improvements, and deletions, the department *or its agent* shall certify to each taxing authority a millage rate which will provide the same ad valorem revenue for each taxing authority as was levied during the prior year. For the purpose of calculating the certified millage, the department *or its agent* shall use 95% of the taxable value appearing on the roll, exclusive of properties appearing for the first time on the assessment roll."

Section 3. Section 15-10-206, MCA, is amended to read:

**"15-10-206. Exceptions for decisions of tax appeal boards.** The department *or its agent* shall notify each taxing authority of any change in

the assessment roll which results from actions by the state or county tax appeal boards. An increase in the taxing authority's millage above that certified by the department *or its agent* or adopted by resolution or ordinance of the governing body of the taxing authority which is required solely by a reduction of the assessment roll by the state or county tax appeal board may be adopted without further notice."

Section 4. Section 15-15-102, MCA, is amended to read:

"**15-15-102. Application for reduction in valuation.** No reduction may be made in the valuation of property unless the party affected or his agent makes and files with the county tax appeal board on or before the first Monday in June or 15 days after receiving a notice of classification and appraisal from the department of revenue *or its agent*, whichever is later, a written application *for reduction*. The application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed *the* reduction should be made."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning on or after January 1, 1989.

Approved February 13, 1989.

## CHAPTER NO. 10

[HB 8]

AN ACT TO MAKE PERMANENT THE PROVISIONS ALLOWING SPECIAL VEHICLE COMBINATIONS TO OPERATE BY SPECIAL PERMIT UPON INTERSTATE HIGHWAYS; REPEALING SECTION 8, CHAPTER 474, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 8, Chapter 474, Laws of 1987, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 15, 1989.

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# CHAPTER NO. 11

[HB 23]

AN ACT TO ALLOW THE MAILING OF MUNICIPAL NOTICES TO 200 OR MORE ELECTORS OR RESIDENTS AT BULK RATES; AMENDING SECTION 7-1-4129, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-1-4129, MCA, is amended to read:

**"7-1-4129. Mail notice.** (1) Unless otherwise specifically provided, when a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice properly addressed in the United States mail with postage paid at the first-class rate;

(b) sending the notice by certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class when notice is to be given by mail to *200 or more* electors or residents of a municipality.

(2) The notice shall contain:

(a) the date, time, and place at which the hearing or other action will be taken;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement shall apply only to persons whose addresses are known."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved February 15, 1989.

# CHAPTER NO. 12

[HB 24]

AN ACT ALLOWING A CITY CLERK TO SEND A DESIGNEE TO PARK BOARD MEETINGS; AMENDING SECTION 7-16-4209, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-16-4209, MCA, is amended to read:

**"7-16-4209. Duties of board officers.** (1) The president and, in his absence, the vice-president shall preside at all meetings of the board and

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shall countersign all warrants issued by the board and perform such other duties as shall be required and directed by the board.

(2) The city clerk, *or his designee,* as ex officio clerk of the board of park commissioners, shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called the record of the board of park commissioners of the city of ..... It shall be the duty of the city clerk as such clerk of the board of park commissioners to keep an accurate account of all transactions of said board separate from other city accounts and to make and submit in writing to said board at the first meeting in January in each year a report under oath showing in detail all the receipts and disbursements made by the board during the year. The report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer. The city clerk shall perform such other services as the board shall require. In the absence of the clerk, *or his designee,* at any meeting held by the board, it shall designate one of its number as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record book of said board."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved February 15, 1989.

# CHAPTER NO. 13

[HB 53]

AN ACT TO EXTEND THE CURRENT 5-YEAR PROPERTY REVALUATION CYCLE FOR AN ADDITIONAL 2 YEARS; AND TO PROVIDE FOR THE VALIDITY OF ASSESSMENTS AND TAXES DURING THIS EXTENDED CYCLE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Policy.** It is the policy of the state of Montana to provide for equitable assessment of taxable property in the state and to provide for periodic revaluation of taxable property in a manner that is fair to all taxpayers.

Section 2. **Purpose.** (1) It is the purpose of [this act] to provide an additional 2 years for completion of the current revaluation cycle, implemented pursuant to 15-7-111 through 15-7-114, in order to permit the department of revenue to comply with the revaluation requirements of 15-7-111 through 15-7-114 in a manner that implements the policy provided for in [section 1].

(2) It is not necessary for the department to commence another 5-year revaluation cycle pursuant to 15-7-111 until January 1, 1993.

Section 3. **Extension of current revaluation cycle.** (1) Notwithstanding the provisions of 15-7-111 through 15-7-114, the current revaluation cycle, implementing 15-7-111, scheduled to end on December 31, 1990,

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and representing a 5-year period commencing January 1, 1986, is hereby extended for an additional 2 years, ending December 31, 1992. The new values determined during this period must be placed on the tax rolls in accordance with 15-7-111(2).

(2) It is not necessary for the department to commence another 5-year revaluation cycle pursuant to 15-7-111 until January 1, 1993.

(3) The extension provided for in subsection (1) does not affect the validity of any assessment made or any taxes levied during the period from January 1, 1986, to December 31, 1992.

Section 4. **Report to revenue oversight committee.** The department of revenue shall report to the revenue oversight committee at every revenue oversight committee meeting as to its progress in completing the revaluation cycle.

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved February 15, 1989.

## CHAPTER NO. 14

[HB 55]

AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO ESTIMATE UNCLAIMED PROPERTY ASSESSMENTS IF A HOLDER OF UNCLAIMED PROPERTY HAS FAILED TO MAINTAIN SUFFICIENT RECORDS; AMENDING SECTION 70-9-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-9-314, MCA, is amended to read:

**"70-9-314. Records requirements — examination.** (1) Every holder required to file a report under 70-9-301 concerning any property for which it has obtained the last-known address of the owner shall maintain a record of the name and last-known address of the owner for 10 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2).

(2) Any business association that sells its travelers' checks, money orders, or similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue, for 5 years after the date the property is reportable.

(3) The department or its designated agent may at reasonable times and upon reasonable notice examine the records of any person who it has

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reason to believe may be holding unclaimed property. In addition, the department shall, in the course of conducting an investigation, examination, or audit under Title 15, identify any abandoned property which is subject to parts 1 through 3.

(4) The commissioner of insurance shall, in the course of conducting an investigation, examination, or audit under Title 33, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department.

(5) The department of commerce shall, in the course of conducting an investigation, examination, or audit under Title 32, identify any abandoned property which is subject to parts 1 through 3 and shall, as soon as practicable, give a detailed report of any such identification to the department.

*(6) If a holder fails to maintain the records required by this section or if his records for the period subject to this chapter are insufficient to permit the preparation of a report, the department may require him to report and pay such amounts as the department may reasonably estimate from any available records.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved February 15, 1989.

# CHAPTER NO. 15

[HB 59]

AN ACT PROVIDING FOR THE GIVING OF OFFICIAL CRIMINAL HISTORY RECORD INFORMATION ON AN INDIVIDUAL TO THE STATE BAR IF THE BAR GIVES THE INDIVIDUAL'S FINGERPRINTS TO THE OFFICIAL AGENCY HOLDING THE INFORMATION; AND AMENDING SECTION 44-5-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-5-302, MCA, is amended to read:

"**44-5-302. Dissemination of criminal history record information that is not public criminal justice information.** *(1)* Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

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*(a)* the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

*(b)* a district court considers dissemination necessary;

*(c)* the information is disseminated in compliance with 44-5-304; or

*(d)* the agency receiving the information is authorized by law to receive it.

*(2) The department of justice and other criminal justice agencies may accept fingerprints of applicants for admission to the state bar of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the department or agency by the state bar, exchange available state, multistate, local, federal (to the extent allowed by federal law), and other criminal history record information with the state bar for licensing purposes."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved February 15, 1989.

# CHAPTER NO. 16

[HB 82]

AN ACT DESIGNATING THE LAST FRIDAY OF APRIL AS ARBOR DAY AND AS AN OFFICIAL DAY OF OBSERVANCE IN MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Arbor Day as official day of observance.** (1) To increase public awareness of the vital importance of conserving and propagating trees and forests to the everyday life of Montana citizens, the last Friday in April is designated Arbor Day and an official day of observance. On this day, there may be special observances and exercises throughout the state to celebrate and emphasize the importance of cultivating forest, fruit, and ornamental trees.

(2) The governor shall encourage the observances and exercises described in this section and, by proclamation, call the public's attention to the importance of the state's forest resources.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 15, 1989.

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# CHAPTER NO. 17

[HB 83]

AN ACT TO PROVIDE THAT A NEGOTIABLE INSTRUMENT BEARING A SPECIAL, QUALIFIED, CONDITIONAL, OR RESTRICTIVE ENDORSEMENT AND TENDERED TO THE DEPARTMENT OF REVENUE IN PAYMENT OF A TAX LIABILITY IS NOT BINDING ON THE DEPARTMENT UNLESS THE TAXPAYER AND THE DEPARTMENT HAVE ENTERED INTO A WRITTEN AGREEMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Payment of taxes by negotiable instrument.** The department of revenue is not bound by a special, qualified, conditional, or restrictive endorsement placed on a negotiable instrument by the maker or drawer, tendered to the department for the payment of a tax liability unless:

(1) the taxpayer and the department have previously entered into a written agreement that specifies the amount of the taxpayer's liability; and

(2) the amount tendered is in accordance with the written agreement.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject or the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Applicability.** [This act] applies to all payments received by the department on or after [the effective date of this act].

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [section 1].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved February 15, 1989.

# CHAPTER NO. 18

[HB 115]

AN ACT TO PERMIT THE CHARGE OF REASONABLE ADOPTION PROCESS FEES; TO PROVIDE FOR THE IMPOSITION OF A FINE ON A PERSON CONVICTED OF CHARGING OR ACCEPTING UNREASONABLE ADOPTION PROCESS FEES; TO REQUIRE A DETAILED REPORT CONCERNING THE ADOPTION PROCESS; AND AMENDING SECTION 40-8-109, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Adoption fees — violation — penalty.** (1) Reasonable adoption fees may be charged by the child's birth parent, birth parents, or guardian for the actual cost of services documented in the report required

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by [section 2] and approved by the court. The cost of services must relate to:

(a) a petition for adoption;

(b) placement of a child;

(c) medical care or services;

(d) prenatal care;

(e) foster care; or

(f) other reasonable costs.

(2) A person who knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person anything of value greater than that allowed under subsection (1) commits the offense of charging excessive adoption process fees.

(3) A person convicted of the offense of charging excessive adoption process fees may be fined an amount not to exceed $1,000.

Section 2. **Report of agreements and disbursements.** (1) Prior to a hearing under 40-8-109, the birth parents or their representatives shall file with the court a report of agreements and disbursements, and they shall serve the report on the department.

(2) The report must contain:

(a) all oral and written agreements between the parties that relate to the future conduct of a party with respect to the child. If an oral agreement is reported, the substance of the agreement must be contained in the report and a copy of the report must be served on each party to the oral agreement. Copies of all written agreements must be attached to the report.

(b) a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parents in connection with proceedings under this chapter. This accounting must include any expenses related to:

(i) the birth of the child;

(ii) placement of the child with the identified adoptive parents;

(iii) medical or hospital care received by the birth parent or child prior to or after the child's birth; and

(iv) services relating to the petition for adoption or the placement of the child that were received by or on behalf of a birth parent or any other person.

(c) a statement by each person furnishing information contained in the report, attesting to the correctness and truthfulness of the information furnished by that person.

Section 3. Section 40-8-109, MCA, is amended to read:

**"40-8-109. Placement for adoption by parents.** (1) No parent may make a placement of a child for adoption with an individual who is not a

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stepparent or a member of the child's extended family unless the parent files with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with 40-6-135(2) through (4).

(2) The notice of parental placement and the relinquishment shall be filed prior to a parent's placement of the child with an individual who intends to adopt the child. The notice of parental placement shall contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement and a relinquishment, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents *or* their representatives have *provided* the court with *the report required by [section 2]*;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) Within 45 days of filing of the notice of parental placement and the relinquishment, the court shall schedule a hearing to consider the proposed placement.

(5) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the department.

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

(6) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose

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of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

(7) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child."

Section 4. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to [sections 1 and 2].

Approved February 15, 1989.

# CHAPTER NO. 19

[HB 145]

AN ACT CLARIFYING THE TAXATION OF AIRLINE PROPERTY FOR TAXABLE YEARS BEGINNING IN 1991; AND AMENDING SECTION 15-6-147, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-147, MCA, is amended to read:

**"15-6-147. Class seventeen property — description — taxable percentage.** (1) Class seventeen property includes all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986.

(2) For the taxable years 1986 through 1990 class seventeen property is taxed at 12%, and for each taxable year thereafter, class seventeen property is taxed at the lesser of 12% or the percentage rate *"R", to be determined by the department as provided in subsection (3).*

*(3) R = A/B where:*

*(a) A is the total statewide taxable value of all commercial property, except class seventeen property, as commercial property is described in 15-1-101(1)(d), including class one and class two property; and*

*(b) B is the total statewide market value of all commercial property, except class seventeen property, as commercial property is described in 15-1-101(1)(d), including class one and class two property.*

*(c) In accordance with the commercial property taxable value adjustment procedure set forth in 15-6-145(4) for railroad property, the department shall determine the value-weighted mean sales assessment ratio "M" and make a similar adjustment prior to calculating "A" for airline property, in order to equalize airline taxable values.*

*(4)* For the purpose of complying with the Tax Equity and Fiscal Responsibility Act of 1982, as it read on January 1, 1986, the rate "R"

referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class seventeen property, as commercial property is defined in 15-1-101(1)(d)."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved February 15, 1989.

## CHAPTER NO. 20

[HB 14]

AN ACT TO TRANSFER THE FIRE SERVICES TRAINING SCHOOL FROM THE BOARD OF PUBLIC EDUCATION TO THE BOARD OF REGENTS; AMENDING SECTIONS 2-15-1518, 2-15-1519, 20-31-101, 20-31-102, 20-31-104, 20-31-202, 20-31-301, 20-31-401, AND 20-31-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1518, MCA, is amended to read:

**"2-15-1518. Director of fire services training school.** (1) The board of *regents* shall appoint the director of the fire services training school.

(2) The director may be removed for cause.

(3) The director must have the following qualifications:

(a) a bachelor's degree in a field of study related to fire protection; or

(b) 5 years' experience in an organized training program as an instructor and 7 years' experience as a firefighter or fire combat officer."

Section 2. Section 2-15-1519, MCA, is amended to read:

**"2-15-1519. Fire services training advisory council.** (1) The board of *regents* shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) a representative of the insurance industry; and

(g) a professional educator.

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(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) of this section.

(3) Members appointed shall serve for a 4-year term and may be removed for cause. If a vacancy occurs, a member shall be appointed to fill the unexpired term. A member may be reappointed.

(4) The state fire marshal, a fire control officer designated by the commissioner of state lands, and the director of the fire services training school are ex officio members of the council."

Section 3. Section 20-31-101, MCA, is amended to read:

**"20-31-101. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of *regents* provided for in Article X, section 9, subsection *(2)*, of the 1972 Montana constitution and *2-15-1505*.

(2) "Council" means the fire services training advisory council provided for in 2-15-1519.

(3) "Director" means the director of the fire services training school provided for in 2-15-1518."

Section 4. Section 20-31-102, MCA, is amended to read:

**"20-31-102. Fire services training school — creation — supervision by board of regents.** There is a fire services training school. The fire services training school is allocated to the board of *regents* for purposes of planning and coordination. The budget request for the fire services training school shall be submitted through the board of *regents*. The general supervision of the school is vested in the board of *regents*."

Section 5. Section 20-31-104, MCA, is amended to read:

**"20-31-104. Coordination with other agencies.** The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of *regents*."

Section 6. Section 20-31-202, MCA, is amended to read:

**"20-31-202. Duties of director.** The director shall appoint a staff and execute policies and programs established by the board of *regents* for the fire services training school. The director is responsible for the direction of staff and operation of the school."

Section 7. Section 20-31-301, MCA, is amended to read:

**"20-31-301. Organization — procedural rules — compensation of members.** (1) The members of the fire services advisory council shall elect a chairman, a vice-chairman, and such other officers considered advisable by the council. The terms of the officers shall be established by the council.

(2) The council shall adopt rules governing its procedures subject to approval of the board of *regents*.

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(3) Members of the council shall receive compensation under 2-18-501 through 2-18-503."

Section 8. Section 20-31-401, MCA, is amended to read:

**"20-31-401. Acceptance of gifts and grants — contractual agreements.** The board of *regents* may accept gifts, donations, and grants of property and services on behalf of the fire services training school. The board may enter into contractual agreements necessary to facilitate achievement of the purposes of the school."

Section 9. Section 20-31-402, MCA, is amended to read:

**"20-31-402. Cost recovery fee.** The board of *regents* may establish a cost recovery fee for training of commercially employed firefighters, and such fees shall be deposited to the general fund."

Section 10. **Effective date.** [This act] is effective July 1, 1989.

Approved February 17, 1989.

## CHAPTER NO. 21

[HB 22]

AN ACT TO REQUIRE THAT THE INTEREST RATE ON DEPOSITED MUNICIPAL MONEY BE NO LESS THAN THE INTEREST RATE ON MONEY FROM PRIVATE SOURCES; AMENDING SECTION 7-6-4602, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-4602, MCA, is amended to read:

**"7-6-4602. Interest rate on deposited public money.** Public money deposited pursuant to 7-6-4601 shall bear interest at *a rate no less than the rate of interest paid on money from private sources on the same terms.*"

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved February 17, 1989.

## CHAPTER NO. 22

[HB 36]

AN ACT ALLOWING A NONPROFIT ORGANIZATION TO RETAIN UP TO 50 PERCENT OF THE VALUE OF A SPORTS POOL; AND AMENDING SECTIONS 23-5-501 AND 23-5-503, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-501, MCA, is amended to read:

**"23-5-501. Definitions.** *As used in this part, unless the context clearly requires otherwise, the following definitions apply:*

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*(1) "Nonprofit organization" means a charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, or service organization, other than one established for the purpose of conducting or participating in a sports pool.*

*(2)* "Sports pool" means a card divided into squares or spaces, with the names of the participants in the pool written within such squares or spaces, for which consideration in money is paid by the person playing for each square or space for the chance to win money or other items of value on any sports event wherein the participants in such sports event are natural persons or animals."

Section 2. Section 23-5-503, MCA, is amended to read:

**"23-5-503. Rules.** (1) The card used for recording the pool and upon which the squares or spaces appear shall clearly state in advance of the sale of any chances the number of chances to be sold in that specific pool, the name of the event, the consideration to be paid for each chance, and the total amount to be paid to the winners.

(2) No chance to participate in a sports pool may be sold other than upon the premises in which the sports pool is conducted. No individual chance to participate in a sports pool shall be sold for a consideration in excess of $1, and the total amount to be paid to the winners of any individual sports pool shall not exceed the value of $100. *Except as provided in subsection (3), the* winner of any sports pool shall receive a 100% payout of the value of the sports pool.

*(3) A nonprofit organization that maintains and opens to inspection upon reasonable demand records to verify that the retained portion is used to support charitable activities, scholarships or educational grants, or community service projects may retain up to 50% of the value of a sports pool."*

Approved February 17, 1989.

## CHAPTER NO. 23

[HB 130]

AN ACT REVISING ODOMETER READING DISCLOSURE REQUIREMENTS; REVISING THE LENGTH OF TIME A DEALER IS REQUIRED TO PRESERVE ODOMETER RECORDS; AND AMENDING SECTION 61-3-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-206, MCA, is amended to read:

**"61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record.** (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of ownership the odometer reading at the time of transfer or, if the

certificate of ownership does not provide for the recording of the odometer reading, furnish to the purchaser a written statement signed by each seller, containing the following information:

(a) the odometer reading at the time of transfer;

(b) the date of transfer;

(c) the seller's name and current address;

(d) the purchaser's name and current address;

(e) the vehicle year, make, *model,* body style, and identification number;

(f) one of the following statements or certification:

(i) a certification by the seller that, to the best of his knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit of 99,999 miles or kilometers, he shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is *10* years old or older;

(b) a vehicle that is not self-propelled;

(c) a new motor vehicle transferred between dealers prior to its first retail sale, unless such vehicle has been used as a demonstrator;

*(d) a vehicle having a gross weight rating of more than 16,000 pounds; or*

*(e) a vehicle sold directly by the manufacturer to an agency of the United States.*

*(4) A dealer licensed under 61-4-101 shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved February 17, 1989.

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# CHAPTER NO. 24

[HB 19]

AN ACT REMOVING THE REQUIREMENT THAT BANK DIRECTORS BE STOCKHOLDERS; AMENDING SECTIONS 32-1-322 AND 32-1-803, MCA; REPEALING SECTION 32-1-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-1-322, MCA, is amended to read:

**"32-1-322. Board of directors — qualifications, tenure, and vacancies.** (1) The affairs of the bank shall be managed by a board of directors, not less than three in number, of whom at least two-thirds must be residents of *Montana. Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require.* A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors shall be elected for a term of 1 year at the annual meeting of the stockholders, which shall be held on any business day before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation may not thereby be dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons so elected shall hold their office until the second Tuesday of the following January or until others are elected and qualified. Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in the office *and* that he will not knowingly violate or permit a violation of any of the provisions of this chapter. The oaths shall be made in duplicate, one copy of which shall be transmitted to the department and filed in its office and one copy shall be kept on file in the office of the bank.

(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board and the directors so appointed shall hold office until the next annual election."

Section 2. Section 32-1-803, MCA, is amended to read:

**"32-1-803. Organization of subsidiary trust companies.** A subsidiary trust company shall be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-303, 32-1-305 through 32-1-322, 32-1-325, and 32-1-351 through 32-1-356 or under the laws of the United States. To the extent not inconsistent with the provisions of this part, any subsidiary trust company incorporated under the laws of this state shall be subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States shall be subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state."

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Section 3. **Repealer.** Section 32-1-324, MCA, is repealed.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved February 18, 1989.

# CHAPTER NO. 25

[HB 61]

AN ACT TO INCREASE THE MAXIMUM OBLIGATION AUTHORITY OF STATE HIGHWAY CONSTRUCTION FUNDS TO A COUNTY FOR THE FEDERAL-AID SECONDARY HIGHWAY SYSTEM; AND AMENDING SECTION 60-3-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 60-3-206, MCA, is amended to read:

**"60-3-206. Apportionment of state funds to federal-aid secondary highway system.** (1) Each fiscal year the department shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) one-fourth in the ratio of land area in each district to the total land area in the state;

(b) one-fourth in the ratio of the rural population in each district to the total rural population in the state;

(c) one-fourth in the ratio of the rural road mileage in each district to the total rural road mileage in the state;

(d) one-fourth in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, obligations in any county may exceed the amount apportioned to that county to the extent of *five* times the amount of the last apportionment to the county. The amount of any excess obligations shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) "Rural population" means total population less the population in cities over 5,000 persons and their unincorporated fringe urban areas as reported in the latest federal census. Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

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(b) "Rural road mileage" means all road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system. Rural road mileage reported by the road inventory of the department shall be used in determining rural road mileage.

(c) "Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the department of revenue.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the department of state lands.

(iii) The average value of privately owned lands shall be the average value of state-owned lands if the actual value is not available."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved February 23, 1989.

# CHAPTER NO. 26

[HB 107]

AN ACT TO RAISE JUSTICE'S COURT FILING FEES; AND AMENDING SECTIONS 25-31-112 AND 25-35-608, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-31-112, MCA, is amended to read:

**"25-31-112. Fees.** The following is the schedule of fees which, except as provided in 25-35-605, shall be paid in every civil action in a justice's court:

(1) *$25* when complaint is filed, to be paid by the plaintiff;

(2) $10 when the defendant appears, to be paid by the defendant;

(3) $10 to be paid by the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the *$25* for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) $10 for all services in an action where judgment is rendered by confession;

(5) $10 for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate."

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Section 2. Section 25-35-608, MCA, is amended to read:

"**25-35-608. Fees.** (1) The clerk of the justice's court shall collect a fee of:

(a) *$10* from the plaintiff upon the filing of the sworn complaint; and

(b) *$5* from the defendant upon his appearance and contesting of the complaint or execution of a counterclaim.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court."

Approved February 23, 1989.

# CHAPTER NO. 27

[HB 136]

AN ACT TO REVISE CERTAIN PROVISIONS RELATING TO COMMERCIAL FERTILIZERS; TO MAKE CERTAIN FEES NONREFUNDABLE; TO PROVIDE A RENEWAL DATE AND LATE FEES FOR LICENSES; TO REQUIRE UNIFORM REGISTRATION OF ALL SPECIALTY FERTILIZERS; AND AMENDING SECTIONS 80-10-201, 80-10-202, AND 80-10-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-10-201, MCA, is amended to read:

"**80-10-201. Registration and licenses.** (1) Each brand and grade of fertilizer and each soil amendment except unmanipulated animal and vegetable manures shall be registered by or on behalf of the manufacturer before distribution in this state. The application for registration shall be submitted to the department on a form furnished or approved by the department and shall be accompanied by a *nonrefundable* fee of $10 per grade for each fertilizer and for each soil amendment with exception of specialty fertilizers which shall be registered at a *nonrefundable* fee of $25 each. Upon approval, the department shall furnish a copy of the registration to the applicant. All registrations expire on December 31 of each year.

(2) (a) The application for registration shall include:

(i) the brand and grade;

(ii) the guaranteed analysis;

(iii) the source of each plant food element guaranteed;

(iv) the name and address of the registrant;

(v) a copy or facsimile of each label and of promotional material when requested by the department.

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(b) Further, the department shall require the applicant to furnish replicated data, performed by a reputable investigator whose work is recognized as acceptable by the director of the agricultural experiment station or his designee, verifying any claims for effectiveness or agricultural value of any fertilizer or soil amendment product which is not generally recognized as having the values claimed at the use rates recommended.

(3) A distributor may not be required to register any brand or grade of commercial fertilizer which is already registered under this section by another person.

(4) No manufacturer may reregister his product until full payment of the assessment fees provided for in 80-10-103 and 80-10-207 has been received by the department."

Section 2. Section 80-10-202, MCA, is amended to read:

"**80-10-202. License required.** No person shall distribute in this state any type of fertilizer or soil amendment, except unmanipulated animal or vegetable manures, or specialty fertilizer, until a license to distribute has been obtained from the department for each facility distributing into this state and for each handling facility in this state. *All new applicants or those failing to renew their licenses by January 1 of each year shall pay* a *nonrefundable $75* fee for each license. The department may exempt, by rule, manufacturers. All licenses expire on December 31 of each year and are subject to the following:

(1) The application for license shall be on forms provided by the department.

*(2)* The licensee is not required to register a grade of fertilizer registered by the manufacturer or blended to grade from registered products by the licensee.

*(3) License renewals received by the department prior to January 1 of each year must be accompanied by a fee of $50 for each license.*"

Section 3. Section 80-10-207, MCA, is amended to read:

"**80-10-207. Fees.** (1) (a) A manufacturer registering under 80-10-201(1) shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal and vegetable manures, provided that sales to manufacturers or exchanges between them are exempt. The fees are:

(i) inspection of fertilizers other than anhydrous ammonia, 20 cents per ton. The department may by rule after hearing adjust the inspection fee not to exceed a maximum of 25 cents per ton to maintain adequate funding for the administration of this part. Any change in fee becomes effective on the first day of a reporting period. All manufacturers shall be given notice of any change in fees before the effective date.

(ii) inspection of anhydrous ammonia, 20 cents per ton. The department may by rule after hearing adjust the anhydrous ammonia inspection fee not to exceed a maximum of 65 cents per ton to maintain adequate funding for the administration and enforcement of part 5 of this chapter. Any change

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in fee becomes effective on the first day of a reporting period. All registrants and manufacturers of anhydrous ammonia shall be given notice of any change in fees before the effective date of the fee adjustment.

(iii) assessment, the fee prescribed in 80-10-103. The assessment fee shall be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer or soil amendment material is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee must be paid under that subsection, but only on the added fertilizer or soil amendment.

(2) There shall be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of registered soil amendment is sold per 6-month period, there shall be paid to the department a fee of $5 per soil amendment per 6-month period in lieu of the 10 cents per ton fee. Inspection fees shall be used by the department for administration of this part.

(3) (a) (i) Every licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated manures, to an unlicensed or unregistered person in this state shall file with the department on forms furnished or approved by the department a semiannual statement for the periods ending June 30 and December 31 setting forth the number of net tons of each commercial fertilizer and/or soil amendment distributed in this state during the 6-month period. The report is due on or before the 30th day of the month following the close of each period.

(ii) Every manufacturer who registers a soil amendment or commercial fertilizer in this state, or a person who registers on the manufacturer's behalf, except specialty fertilizer and unmanipulated manures, shall file with the department on forms furnished or approved by the department a monthly statement setting forth the number of net tons of each registered commercial fertilizer and soil amendment distributed in this state during the month and to whom it was distributed. The report is due on or before the 30th day of the following month. The manufacturer or person registering on behalf of the manufacturer shall pay the fees set forth in subsection (1) at that time.

(b) If the tonnage report required by subsection (3)(a)(ii) is not filed and the payment of fees is not made within 30 days after the end of the period a collection fee amounting to 10% of the amount due but not less than $10 shall be assessed against the manufacturer, and the amount of fees due shall constitute a debt and become the basis of a judgment against the manufacturer.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and moneys collected as penalties shall be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of

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equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) shall be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted thereunder."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved February 23, 1989.

# CHAPTER NO. 28

[HB 195]

AN ACT TO REQUIRE A COUNTY SUPERINTENDENT OF SCHOOLS, ON APPEAL OF A DISMISSAL OF A TEACHER FOR CAUSE, TO SCHEDULE A HEARING WITHIN 10 DAYS AND TO HOLD THE HEARING WITHIN 30 DAYS, UNLESS THE PERIOD IS EXTENDED BY MUTUAL AGREEMENT BETWEEN THE PARTIES; AND AMENDING SECTION 20-4-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-4-207, MCA, is amended to read:

**"20-4-207. Dismissal of teacher under contract.** (1) The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

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(c) The notice must state the specific instances of behavior or acts that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of his right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 5 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 10 days appeal such dismissal to the county superintendent. Following such appeal, a hearing *must* be *scheduled* within 10 days *and held within 30 days after the appeal, except that the period may be extended upon agreement between the teacher and the trustees.* If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal."

Approved February 23, 1989.

# CHAPTER NO. 29

[HB 199]

AN ACT AUTHORIZING THE BOARD OF COSMETOLOGISTS TO GRANT TEMPORARY LICENSES TO GRADUATE MANICURISTS FOR A PERIOD NOT TO EXCEED 90 DAYS OR UNTIL THE NEXT MANICURISTS' EXAMINATION IS HELD AND RESULTS ANNOUNCED; AND AMENDING SECTION 37-31-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-31-307, MCA, is amended to read:

**"37-31-307. Temporary license pending examination.** The board may authorize the department to grant to a graduate of a registered school of any state, on the payment of the fee prescribed by law, a temporary license authorizing the graduate to practice *cosmetology* under the supervision of a licensed cosmetologist in the practice of hairdressing and beauty culture *or to practice manicuring under the supervision of a licensed manicurist* for a period not to exceed 90 days or until the next examination is

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held by the department and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate of graduation from such a registered school. *A* temporary *license is* not renewable."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved February 23, 1989.

## CHAPTER NO. 30

[HB 260]

AN ACT TO PROVIDE THAT A PERSON DRIVING A MOTOR VEHICLE OR COMMERCIAL MOTOR VEHICLE IN THIS STATE WHILE HIS LICENSE IS SUSPENDED OR REVOKED IN ANY STATE IS GUILTY OF A MISDEMEANOR; AND AMENDING SECTION 61-5-212, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked — penalty.** (1) Any person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when his privilege to do *so* is suspended or revoked *in this state or any other state is* guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be *fined* not more than $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the *person's* license or commercial vehicle operator's endorsement was suspended or revoked shall extend the period of suspension or revocation for an additional like period."

Approved February 23, 1989.

## CHAPTER NO. 31

[HB 4]

AN ACT CLARIFYING THE RATE OF SEVERANCE TAX ON CERTAIN COAL; AMENDING SECTIONS 15-35-102, 15-35-103, AND 15-35-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-35-102, MCA, is amended to read:

**"15-35-102. Definitions.** As used in this chapter, the following definitions apply:

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(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), *applies only for the term of an agreement in effect as of December 31, 1984, and* means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator *applies only for the term of an agreement in effect as of December 31, 1984, and* means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

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(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(8) "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

(9) "Produced" means severed from the earth.

(10) "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

(11) "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed his base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

(12) "Strip mining" is defined in 82-4-203 and includes "surface mining".

(13) "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

(14) "Ton" means 2,000 pounds.

(15) "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 2. Section 15-35-103, MCA, is amended to read:

**"15-35-103. Severance tax — rates imposed.** (1) *Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit,* a severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

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*(a) After June 30, 1988, and before July 1, 1990:*

| Heating quality (Btu per pound of coal): | Surface Mining | Underground Mining |
|---|---|---|
| Under 7,000 | 17% of value | 3% of value |
| 7,000 *and over* | 25% of value | 4% of value |

*(b) After June 30, 1990, and before July 1, 1991:*

| Heating quality (Btu per pound of coal): | Surface Mining | Underground Mining |
|---|---|---|
| Under 7,000 | 13% of value | 3% of value |
| 7,000 *and over* | 20% of value | 4% of value |

*(c) After June 30, 1991:*

| Heating quality (Btu per pound of coal): | Surface Mining | Underground Mining |
|---|---|---|
| Under 7,000 | *10%* of value | 3% of value |
| 7,000 *and over* | 15% of value | 4% of value |

*(2)* "Value" means the contract sales price.

*(3)* The formula which yields the greater amount of tax in a particular case shall be used at each point on these schedules.

*(4)* A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

*(5)* A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202."

Section 3. Section 15-35-202, MCA, is amended to read:

**"15-35-202. New coal production incentive tax credit allowed — application limited.** (1) A coal mine operator is entitled to a new coal production incentive tax credit against the tax imposed under 15-35-103 of:

(a) 40% for incremental production sold *after June 30, 1988, and before July 1,* 1990; *and*

*(b) 25% for incremental production sold after June 30, 1990, and before July 1, 1991.*

(2) A coal mine operator is entitled to a new coal production incentive tax credit against the tax imposed under 15-35-103 on incremental production for the entire term of an agreement, except as provided in subsection (3), *and is entitled to adjustment of the base consumption level and the*

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*base production level, as defined in 15-35-102,* if the incremental production resulted from coal purchases under:

*(a)* an existing agreement which was extended *after December 31, 1984, and before July 1, 1991,* for at least a 5-year period; or

*(b)* a new agreement that was executed *after December 31, 1984, and before July 1, 1991.*

(3) No credit may be claimed for coal produced prior to January 1, 1985."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. **Effective date — applicability.** (1) [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to January 1, 1989.

(2) [This act] applies to all coal severance tax revenue recorded on or after January 1, 1989, regardless of when the tax obligation accrued.

Approved February 24, 1989.

## CHAPTER NO. 32

[HB 17]

AN ACT TO AUTHORIZE CITIES AND TOWNS TO APPROPRIATE MONEY RECEIVED FROM THE FEDERAL OR STATE GOVERNMENT REGARDLESS OF WHEN THE MONEY IS RECEIVED.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation of federal or state money by a city or town.** (1) The council of a city or town may appropriate money received from the federal or state government regardless of when the money is received. The expenditure of the funds must comply with any applicable federal or state law, rule, or regulation governing the receipt or use of the money.

(2) The adopted appropriation must state the source of the money, the expenditure program for the funds, and the effective date of the appropriation.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [section 1].

Approved February 24, 1989.

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# CHAPTER NO. 33

[HB 21]

AN ACT TO EXEMPT EMPLOYMENT OF DEPENDENT MEMBERS OF AN EMPLOYER'S FAMILY FROM THE WORKERS' COMPENSATION ACT; AMENDING SECTION 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, section 39-71-401(2)(a), MCA, excludes employment of members of an employer's family dwelling in the employer's household from application of the Workers' Compensation Act unless the employer elects coverage; and

WHEREAS, the Montana Supreme Court determined in Cottrill v. State Compensation Insurance Fund, 44 St. Rep. 1762 (1987), that the Legislature failed to indicate a legitimate state interest or objective in excluding such employments from the Workers' Compensation Act and therefore voided the statutory family member exemption; and

WHEREAS, a person has both legal and moral duties to provide for the needs of members of his family who are dependent upon him for support; and

WHEREAS, the obligation of providing workers' compensation insurance for dependent family member employees in addition to other family support obligations creates an undue economic hardship on family employers and may discourage and inhibit such employment; and

WHEREAS, workers' compensation insurance may overlap coverage provided under other nonwork-related insurance that the family employer may wish to provide for dependent members of his family; and

WHEREAS, the distinction between performance of normal family responsibilities and "employment" for which workers' compensation coverage is required is in many instances difficult to determine within a family unit, and the uncertainty of what constitutes family employment may result in many employers being unintentionally uninsured, resulting in unknown liabilities for the state compensation insurance fund and the uninsured employer's fund.

THEREFORE, the Legislature of the State of Montana finds it is reasonable and necessary to exclude from the Workers' Compensation Act employment of dependent members of the employer's immediate family for whom an exemption may be claimed under the federal Internal Revenue Code.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-401, MCA, is amended to read:

**"39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all

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employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of *a dependent member* of an employer's family *for whom an exemption may be claimed by the employer under the federal Internal Revenue Code*;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

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(3) (a) A sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor [and who is not contracting] for cosmetologist's services or barber's services as defined in 39-51-204(1)(l) must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the division for an exemption from the Workers' Compensation Act for himself.

(b) The application must be made in accordance with the rules adopted by the division. The division may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the division, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the division, the election remains effective and the independent contractor retains his status as an independent contractor until he notifies the division of any change in his status and provides a description of his present work status.

(e) If the division denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to such rules as the division promulgates and subject in all cases to approval by the division, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the division, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and the division; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, the division, and the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if he elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer must sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is

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any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved February 23, 1989.

## CHAPTER NO. 34

[HB 37]

AN ACT REMOVING THE REQUIREMENT THAT THE DIRECTOR OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES BE A PHYSICIAN; REQUIRING ONE MEMBER OF THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO BE A DOCTOR OF MEDICINE LICENSED BY THE BOARD OF MEDICAL EXAMINERS; AMENDING SECTIONS 2-15-2101, 2-15-2104, AND 33-31-102, MCA; REPEALING SECTION 2-15-2102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-2101, MCA, is amended to read:

**"2-15-2101. Department of health and environmental sciences — head.** There is a department of health and environmental sciences. The department head is the director of health and environmental sciences appointed by the governor in accordance with 2-15-111."

Section 2. Section 2-15-2104, MCA, is amended to read:

**"2-15-2104. Board of health and environmental sciences — membership — quasi-judicial.** (1) There is a board of health and environmental sciences.

(2) The board consists of seven members appointed by the governor as follows:

(a) two members having professional qualifications in a human health service licensed by a board within a department of professional and occupational licenses, *one of whom must be a doctor of medicine licensed by the board of medical examiners*;

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(b) one member being a doctor of veterinary medicine licensed in this state who is engaged in food animal medicine; and

(c) four members who do not have the qualifications described in subsection (2)(a) or (2)(b) and who have demonstrated an active interest in the field of public health and the economic welfare of the state.

(3) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 3. Section 33-31-102, MCA, is amended to read:

**"33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Agent" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services; and

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction.

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Department of health" means the department of health and environmental sciences provided for in 2-15-2101.

(5) "Director" means the director of the department of health and environmental sciences provided for in *2-15-2101*.

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(6) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(7) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(8) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(9) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(10) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

(11) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(12) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(13) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or nurse specialist as specifically listed in 37-8-202 who treats any illness or injury

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within the scope and limitations of his practice or *any* other person who is licensed or otherwise authorized in this state to furnish health care services.

(14) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 4. **Repealer.** Section 2-15-2102, MCA, is repealed.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Section 6. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to a director of health and environmental sciences appointed on or after January 2, 1989.

Approved February 24, 1989.

## CHAPTER NO. 35

[HB 64]

AN ACT TO GENERALLY REVISE SCHOOL BUDGETING, FINANCE REPORTING, AND INVESTMENT REQUIREMENTS; AMENDING SECTIONS 20-3-205, 20-3-209, 20-9-103, 20-9-111, 20-9-141, 20-9-213, AND 20-10-144, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-205, MCA, is amended to read:

**"20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

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(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) quarterly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

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(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender such records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts shall be discussed."

Section 2. Section 20-3-209, MCA, is amended to read:

**"20-3-209. Annual report.** The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than September 1. Such report shall be completed on the forms supplied by the superintendent of public instruction which shall require the reporting of:

*(1)* the final budget information for each district of the county, as prescribed by 20-9-134(1);

*(2)* the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(5);

*(3)* the pupil information for each district provided the county superintendent under the provisions of 20-4-301(1)(d) or 20-4-402(7); and

*(4)* any other information that may be requested by the superintendent of public instruction which is within his authority prescribed by this title."

Section 3. Section 20-9-103, MCA, is amended to read:

**"20-9-103. School budget form.** (1) The format of the school budget form shall be prescribed by the superintendent of public instruction and

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shall provide for proper school budgeting procedures in accordance with the budgeting requirements of this title and generally accepted accounting principles. The superintendent of public instruction shall cause a sufficient number of the budget forms to be printed for use by all districts for each school fiscal year.

(2) Each district shall use the budget forms prescribed by the superintendent of public instruction except that a district may *in addition*, with the approval of the superintendent of public instruction, use a more detailed form."

Section 4. Section 20-9-111, MCA, is amended to read:

**"20-9-111. Initial budget items for completion.** (1) By April 10, the county superintendent shall send to each district two copies of the budget form and any other information or data as may be required by the superintendent of public instruction or that the county superintendent may deem necessary.

(2) Upon receipt of the budget forms, the district shall complete those portions of them which require information about the *last-completed school year and the* then-current school year. *The county superintendent shall provide information about the last-completed school year for third-class districts.*"

Section 5. Section 20-9-141, MCA, is amended to read:

**"20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the total of the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303;

(ii) the district's permissive levy amount as provided in 20-9-352; and

(iii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the total of the moneys available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

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(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated *or reappropriated* revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537;

(vi) anticipated net proceeds taxes for interim production and new production, as defined in 15-23-601;

(vii) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(viii) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the total of the moneys available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) shall be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy shall be made by the county commissioners in accordance with 20-9-142."

Section 6. Section 20-9-213, MCA, is amended to read:

"**20-9-213. Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person other than the trustees acting as a governing board shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with rules prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district moneys and cause warrants to be issued for the payment of lawful obligations;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district, whenever in the judgment of the trustees such investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC, FSLIC, or NCUA located in the state, *or in a repurchase agreement as authorized in 7-6-213.* All interest collected on such deposits or investments shall be credited to the fund

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from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds shall be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 17, chapter 6.

(5) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated.

(6) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(7) cause the accounting records of the district to be audited annually as required by law; and

(8) perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district."

Section 7. Section 20-10-144, MCA, is amended to read:

**"20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 shall be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for such district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if such amount exceeds 10% of the

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total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget shall be reduced to such limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, shall be divided by 3 and the resulting one-third amount shall be used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount shall be the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), shall be the budgeted county transportation reimbursement for elementary districts and shall be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 shall be the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5) of this section, except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 shall be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of such district revenue and cash reappropriated shall be used to reduce the county financing obligation in subsections (2)(b) or (2)(c) and, if such county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district moneys under subsection (2)(d) above, shall be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each such county.

(3) The total of the moneys available for the reduction of property tax on the district for the transportation fund shall be determined by totaling:

(a) anticipated federal moneys received under the provisions of Title I of Public Law 81-874 or other anticipated federal moneys received in lieu of such federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for such district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

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(d) anticipated *or reappropriated* interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) anticipated *or reappropriated* revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537; plus

(f) net proceeds taxes for interim production and new production, as defined in 15-23-601; plus

(g) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

(h) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. Such cash reserve shall not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and shall be for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund shall be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding such difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of moneys available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a) above.

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts shall be computed by adding all such requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county shall be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and such levies shall be made by the county commissioners in accordance with 20-9-142."

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Approved February 24, 1989.

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# CHAPTER NO. 36

[HB 79]

AN ACT TO AUTHORIZE A COMBINATION COUNTY FERRY AND BRIDGE FUND IN COUNTIES THAT OWN OR OPERATE A PUBLIC FERRY; AMENDING SECTIONS 7-14-2502 AND 7-14-2807, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-14-2502, MCA, is amended to read:

**"7-14-2502. Special bridge tax authorized — combined ferry and bridge fund.** (1) Each board may levy a special tax not to exceed 4 mills on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than 4,000 and the taxable value of property in that county is $20 million or less, the board may, if necessary, levy 1 mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than 6,000 and the taxable value of property in that county is not less than $20 million or more than $40 million, the board may, if necessary, levy 2 mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. *Except when the county has a combined ferry and bridge fund, the* money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

*(5) If a county owns or operates a public ferry, the board may combine into a single fund the revenue from the county public ferry tax levy authorized in 7-14-2807, the revenue from the special municipal bridge levy authorized in 7-14-2503, and the revenue from the levy authorized by this section. The fund may be used for any lawful purpose authorized for bridges in this part or in Title 7, chapter 14, part 22, or for public ferries in Title 7, chapter 22, part 28."*

Section 2. Section 7-14-2807, MCA, is amended to read:

**"7-14-2807. Tax levy for public ferry — combined ferry and bridge fund.** *(1) If a county owns or operates a public ferry, the* board of county commissioners may levy a special tax, not to exceed 2 mills on the dollar, on the taxable property of the county for the purpose of constructing, maintaining, and repairing public ferries.

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*(2) The board may combine the revenue from the tax authorized in this section with revenues from taxes to support bridges as provided in 7-14-2502."*

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved February 24, 1989.

# CHAPTER NO. 37

[HB 91]

AN ACT INCREASING THE FEE CHARGED BY A COUNTY CLERK FOR A CERTIFIED COPY OF A BIRTH OR DEATH CERTIFICATE; AMENDING SECTION 7-4-2631, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2631, MCA, is amended to read:

**"7-4-2631. Fees of county clerk.** (1) Except as provided in 7-4-2632, the county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $2;

(d) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

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(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed under those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

(m) for each certified copy of a birth certificate or a death certificate, *$3*;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. These fees must be paid by a state agency on a monthly basis."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved February 24, 1989.

# CHAPTER NO. 38

[HB 137]

AN ACT GENERALLY REVISING COMMERCIAL FEED LAWS; SPECIFYING LICENSE PERIODS; ESTABLISHING RENEWAL DEADLINES; INCREASING CERTAIN FEE PROVISIONS; AND AMENDING SECTIONS 80-9-201 AND 80-9-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-9-201, MCA, is amended to read:

**"80-9-201. Permits and registration.** (1) *(a)* No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department, on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. *All new applicants or those failing to renew a permit by January 1 of each year* shall pay a nonrefundable fee of $25 per calendar year for each facility, distribution point, or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit

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holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision.

*(b) Feed permit renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of $25 for each permit.*

(2) *(a)* No person may distribute in this state a commercial feed, except a custom-mixed feed, which has not been registered under this section by the manufacturer. The application for registration *must* be accompanied by a nonrefundable fee of *$6.50* for each product other than a pet food or specialty pet food and a nonrefundable fee of $25 for each pet food or specialty pet food.

*(b) The registration of commercial feeds and specialty pet food is for a period of 1 year commencing October 1 and ending September 30 of each year.*

(3) An applicant for registration shall file with the department the following information:

(a) his name and address;

(b) a complete copy of the label or label facsimile that will appear on the product;

(c) when requested by the department, promotional material and claims made about the product; and

(d) any other necessary information requested by the department.

*(4)* The department may refuse registration of any commercial feed not in compliance with this chapter and may cancel any registration subsequently found not to be in compliance with this chapter. No registration may be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend his application in order to comply with this chapter."

Section 2. Section 80-9-206, MCA, is amended to read:

**"80-9-206. Inspection fees — filing of annual statement.** (1) An inspection fee shall be paid on all commercial feeds, *including custom-mix feeds,* except pet foods and specialty pet foods, distributed in this state as follows:

(a) The inspection fee shall be set *by rule on a cents-per-ton basis, except that the first 10 tons are exempt. The* department may adjust the fee by rule to adequately fund the administration of this chapter. Adjustments shall be made only after holding a public hearing on the proposed changes as required in 80-9-103 and shall remain within the limits of 5 cents to 25 cents per ton. The effective date of any rule adjusting fees will be January 1 of the calendar year following the issuance of such rule. All permit holders are to be notified immediately of any changes in fees.

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(b) The feed manufacturer *has* primary responsibility for paying inspection fees. However, the distributor *is* responsible for inspection fees if the manufacturer has not paid them.

(c) Inspection fees shall be paid on each commercial feed, including *custom-mix feeds and* feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant are exempt but not premixes or ingredients transferred from one plant to another even within the same organization.

(d) A person producing a commercial feed with a feed mixing plant at a feed lot, poultry, swine, or dairy operation *may* not be required to pay inspection fees on the commercial feeds produced and used in his feeding operation at the site, but he will be responsible for any unpaid inspection fees on commercial feed purchased by him and on any commercial feed he produces and distributes other than in his feeding operations at the site.

(2) Each person who holds a permit as required in 80-9-201(1) shall:

(a) file, not later than *January 31* of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31) and upon filing such a statement shall pay the inspection fee at the rate stated in subsection (1) of this section. Inspection fees which have not been remitted to the department *before January 31* shall have a penalty fee of 10% with a minimum of $10 added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records which are necessary or are required by the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a permit."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Reregistration requirements.** All commercial feeds registered on or before [the effective date of this act] must be registered for the upcoming year by October 1, 1989.

Approved February 24, 1989.

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# CHAPTER NO. 39

[HB 138]

AN ACT TO CHANGE THE NAME OF THE FUND IN WHICH THE APPLE INSPECTION ACCOUNT IS LOCATED FROM ENTERPRISE TO STATE SPECIAL REVENUE; TO CHANGE THE REFERENCE TO AN APPLE INSPECTION FUND TO AN APPLE INSPECTION ACCOUNT; AMENDING SECTION 80-3-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-3-212, MCA, is amended to read:

"**80-3-212. Apple inspection account.** (1) There is an *account in the state special revenue* fund in the state treasury known as the apple inspection *account.*

(2) The department shall pay into the apple inspection *account* all fees provided for in 80-3-211.

(3) The money in the apple inspection *account* is allocated to the department to pay the costs of providing services under this part."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to occurrences after July 1, 1987.

Approved February 24, 1989.

# CHAPTER NO. 40

[HB 146]

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO PROVIDE TRAINING AT THE MONTANA LAW ENFORCEMENT ACADEMY FOR INDIVIDUALS WHO ARE NOT LAW ENFORCEMENT OFFICERS BUT WHO MEET THE QUALIFICATIONS FOR ADMISSION TO THE ACADEMY; AMENDING SECTIONS 44-10-102, 44-10-202, AND 44-10-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is included with this bill to make clear the legislature's intent with regard to rules that must be adopted under the extension of authority included in [section 4] of the bill.

It is the intent of this bill to authorize attendance at the Montana law enforcement academy of qualified individuals who are not at the time employed as law enforcement officers. Attendance is intended to be on a

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space-available basis. Rules should be adopted to insure continued priority for the training of law enforcement officers. Rules should assure that law enforcement officer training would not be disrupted or displaced by the attendance of other qualified individuals.

It is the further intent of the legislature that all costs of training are borne by the other qualified individuals and not by the state of Montana. Should rules be required to assure other qualified individuals bear the cost of the training, including the establishment of an adequate fee structure, it is the intent of the legislature that such rules be adopted.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-10-102, MCA, is amended to read:

**"44-10-102. Purpose.** The purpose of this chapter shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers *and other qualified individuals* with a means of securing training in the field of law enforcement."

Section 2. Section 44-10-202, MCA, is amended to read:

**"44-10-202. Powers and duties of department.** The department of justice shall have the power and it shall be its duty to:

(1) establish qualifications for admission to the academy;

(2) select from among qualified applicants those officers *and other individuals* who are to attend the academy each year;

(3) determine the curriculum and methods of training for officers *and other individuals* attending the academy;

(4) select and hire staff as it *considers* necessary to implement this chapter;

(5) establish rules for the conduct of officers *and other individuals enrolled* at the academy;

(6) award appropriate certificates to officers *and other individuals* who successfully complete their training;

(7) provide for the keeping of permanent records of enrollment, attendance, and graduation and other records as the department *considers* necessary;

(8) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.

(9) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;

(10) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations."

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Section 3. Section 44-10-301, MCA, is amended to read:

**"44-10-301. Eligibility.** All bona fide Montana law enforcement officers *and other individuals who meet the qualifications established by the department of justice* shall be eligible to apply for admission to *the Montana law enforcement* academy."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved February 24, 1989.

# CHAPTER NO. 41

[HB 174]

AN ACT ESTABLISHING A LIFETIME FISHING LICENSE FOR THE BLIND; AMENDING SECTIONS 87-2-201 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-201, MCA, is amended to read:

**"87-2-201. Wildlife conservation license prerequisite for other licenses.** *Except as provided in 87-2-803(5), it is* unlawful for any person or persons to purchase any hunting, fishing, or trapping license without first having obtained a wildlife conservation license as hereinafter provided."

Section 2. Section 87-2-803, MCA, is amended to read:

**"87-2-803. Disabled persons.** (1) Disabled persons are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years old or older and who is under 62 years of age.

(3) Such disabled persons shall carry a permit on a form prescribed by the department. A disabled person issued a permit under this subsection is entitled to have the department stamp such a permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that he is permanently physically handicapped and nonambulatory or his mobility is substantially impaired.

(4) A disabled person carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt

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by shooting a firearm from the shoulder, berm, or borrow-pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle parked on such shoulder, berm, or borrow-pit right-of-way in a manner that will not impede traffic or endanger motorists or may hunt by shooting a firearm from within a self-propelled or drawn vehicle parked in an area, not a public highway, where hunting is permitted. Nothing in this subsection allows such disabled person to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A disabled person who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. Any vehicle from which a disabled person is hunting must be conspicuously marked with an orange-colored international symbol of the handicapped on the front, rear, and each side of such vehicle.

*(5) A resident of Montana who is certified by the department as a blind individual, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish with hook and line or rod, as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure."*

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1989.

# CHAPTER NO. 42

[HB 230]

AN ACT TO REMOVE THE REQUIREMENT THAT TRUSTEES OF A SCHOOL DISTRICT UNIFORMLY WAIVE INDIVIDUAL TUITION FOR ELEMENTARY PUPILS; AND AMENDING SECTION 20-5-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-5-303, MCA, is amended to read:

**"20-5-303. Individual tuition for elementary pupil.** (1) No provision of this title shall be construed to deny a parent the right to send his child, at his own expense, to any elementary school of a district other than his resident district when the parent has agreed to pay the tuition acceptable to the trustees of the district where the school is located. The trustees of the district where the school is located may allow the attendance of a child under the provisions of this section at their discretion. When the

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attendance is approved, the trustees shall charge tuition at the same rate prescribed by 20-5-305 reduced by any amount which is waived by the trustees. However, under this section, tuition as determined in 20-5-305 shall be reduced by the amount the parent of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(2) (a) For the purposes of this section, "parent" includes an individual shareholder of a domestic corporation as defined in 35-1-102 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(b) The tax amount to be credited to reduce any tuition charge to a parent under this subsection is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation for the benefit and support of the district in which the child will attend school.

(c) The percentage of total shares as determined in subsection (2)(b)(i) is the percentage of taxes paid as determined in subsection (2)(b)(ii) that is to be credited to reduce the tuition charge."

Approved February 24, 1989.

# CHAPTER NO. 43

[HB 275]

AN ACT TO DELETE THE REQUIREMENT THAT TRUSTEES OF SCHOOL DISTRICTS LIST APPROPRIATION ITEMS ON DISTRICT WARRANTS; AMENDING SECTION 20-9-221, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-221, MCA, is amended to read:

**"20-9-221. Procedure for issuance of warrants.** (1) The trustees of each district shall issue all warrants, and the warrants shall identify:

(a) the budgeted fund or nonbudgeted fund on which the warrant is drawn; and

*(b)* the warrant as an emergency warrant if it is drawn on an emergency budget.

(2) Any warrant issued by a district shall be countersigned by the chairman of the trustees and the clerk of the district before the warrant shall be negotiable. Facsimile signatures may be used in accordance with the

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provisions of 2-16-114. A facsimile signature device used under authority of this section must not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees shall issue warrants in single copy or in triplicate copy. When the warrants are issued in single copy, the trustees shall immediately provide a listing of the issued warrants on a fund-by-fund basis to the county treasurer and retain a copy of the listing in the district accounting records. When the warrants are issued in triplicate, the original copy of the warrant shall be delivered to the payee, the duplicate shall be sent immediately to the county treasurer, and the triplicate shall be retained by the district for accounting record purposes. The duplicate and triplicate copies shall be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved February 24, 1989.

# CHAPTER NO. 44

[HB 7]

AN ACT PROMOTING THE SAFETY OF UNDERWATER DIVERS BY REGULATING THE OPERATION OF MOTORBOATS IN AREAS WHERE A "DIVER-DOWN" SYMBOL IS DISPLAYED; GRANTING RULEMAKING AUTHORITY TO THE FISH AND GAME COMMISSION TO DETERMINE NONDIVING AREAS; PROVIDING FOR A PENALTY AND RESTITUTION UNDER SECTIONS 46-18-241 THROUGH 46-18-249, MCA; AMENDING SECTIONS 23-2-507 AND 23-2-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 23-2-525(4)(c) grants rulemaking authority to the fish and game commission. The department shall, when adopting rules, consult with law enforcement agencies, organizations representing diving interests, and search and rescue organizations within the state in order for these organizations and agencies to assist with adopting rules that will be appropriate for their activities and duties.

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It is intended that the commission may, after a public hearing, establish areas where, because of diver safety or water traffic, underwater diving is not allowed.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-525, MCA, is amended to read:

**"23-2-525. Restricted areas.** (1) No person shall so anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in such a position as to obstruct a passageway ordinarily used by other vessels.

(2) No person shall operate a pleasure vessel within 20 feet of the exterior boundary of a water area which is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas shall be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of such areas.

(3) No person shall, without permission, operate or knowingly permit any person to operate a vessel within 50 feet of a person engaged in fishing, unless unavoidable.

*(4) (a) No person shall purposely, knowingly, or negligently operate a motorboat upon the waters of this state within 100 feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.*

*(b) The motorboat may enter the 100-foot safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the 100-foot safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden of proving that an emergency exists or that there is insufficient water is on the operator.*

*(c) The fish and game commission may by rule determine areas where establishment of a 100-foot safety zone is not allowed in order to provide for diver safety or the regulation of water traffic."*

Section 2. Section 23-2-507, MCA, is amended to read:

**"23-2-507. Penalty.** *(1)* Violations of any section of this part, except 23-2-526(3), unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than $15 or more than $500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures, except those paid to a justice's court, shall be transmitted to the state treasurer, who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund. The moneys shall be used only by the department for enforcement of this part, as amended.

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*(2) If 23-2-525(4) is violated, 46-18-241 through 46-18-249 apply, except that the sentencing court shall order restitution and shall do so regardless of the court's disposition of the violator."*

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 6, 1989.

## CHAPTER NO. 45

[HB 38]

AN ACT INCLUDING BENEFITS RECEIVED UNDER THE UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM AS PROPERTY THAT MAY BE EXEMPTED IN A BANKRUPTCY PROCEEDING; AMENDING SECTION 31-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 31-2-106, MCA, is amended to read:

**"31-2-106. Exempt property — bankruptcy proceeding.** No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d) except that property specified in 11 U.S.C. 522(d)(10) and that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, *19-21-212,* Title 25, chapter 13, part 6, 33-7-511, 33-15-512 through 33-15-514, 35-10-502, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Applicability.** This act applies to bankruptcy petitions in which discharge takes place on or after [the effective date of this act].

Approved March 6, 1989.

## CHAPTER NO. 46

[HB 63]

AN ACT TO PERMIT COUNTY MEMBERSHIP IN ASSOCIATIONS OF COUNTY SCHOOL SUPERINTENDENTS AND TO PROVIDE FOR EXPENSES RELATED TO SUCH MEMBERSHIP.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Membership in associations of county school superintendents — payment of expenses.** (1) The county superintendents of schools of the counties of Montana may obtain county membership in and

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cooperate with associations and organizations of county school superintendents of the state and of other states for the benefit of good government and the protection of county interests.

(2) County school superintendents of the counties of the state are entitled to expenses as provided for state officials in 2-18-501 through 2-18-503 for attendance at any general meeting of the Montana association of county school superintendents held within the state, and the proportionate expenses and charges against each county as a member of such an association must be paid by the county.

Approved March 6, 1989.

## CHAPTER NO. 47

[HB 75]

AN ACT TO AMEND SECTION 20-16-206, MCA, TO CHANGE THE ACCOUNTING PROCEDURE FOR VOCATIONAL-TECHNICAL CENTER FEES AND TO REMOVE THE PROVISION EXCEPTING SUCH FEES FROM BUDGET LIMITATIONS; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-16-206, MCA, is amended to read:

**"20-16-206. Student fees and disposition of collected fees.** (1) Fees for the use of equipment and material used in instruction may be charged by the director of the vocational-technical center. The board of regents shall prescribe the bases and limitations for the charging of such fees.

(2) Fees collected by the vocational-technical center shall be deposited with the state treasurer."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved March 6, 1989.

## CHAPTER NO. 48

[HB 120]

AN ACT ESTABLISHING THE NONRESIDENT FUR DEALER'S LICENSE FEE AT THE RATE SET FOR A SIMILAR LICENSE IN THE NONRESIDENT'S STATE OF RESIDENCE OR $50 IF THERE IS NO RATE SET; AND AMENDING SECTION 87-4-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-4-304, MCA, is amended to read:

**"87-4-304. License classification and fees.** (1) The following classes of licenses shall be issued and the following fees charged therefor:

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(a) resident fur dealer's license, $10;

(b) nonresident fur dealer's license: *the fee must be the same as the fee charged in the nonresident's state of residence for a Montana fur dealer seeking licensure in that state; if the nonresident's state does not issue a nonresident fur dealer's license, the fee is $50.*

(c) fur dealer's agent's license, $10.

(2) Any person who is employed by a resident or nonresident fur dealer as a traveling fur buyer shall be deemed a fur dealer's agent. A fur dealer's agent's license may be issued to any person who is employed as a fur buyer by a licensed resident or licensed nonresident fur dealer, providing that it shall be the responsibility of each and every fur dealer and fur dealer's agent to have the proper license before buying or dealing in furs as defined by 87-4-301."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 6, 1989.

# CHAPTER NO. 49

[HB 129]

AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO IMPOSE A CEASE AND DESIST ORDER AGAINST A MOTOR VEHICLE DEALER UNLAWFULLY ENGAGING IN BUSINESS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Cease and desist order.** When the department has reasonable cause to believe, from information furnished to it or from an investigation made by it, that a person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon the person, by certified mail, a cease and desist order requiring him to cease and desist from further engaging in that business. If the person fails to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court shall proceed in the action as in other actions for injunctions.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [section 1].

Approved March 6, 1989.

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# CHAPTER NO. 50

[HB 99]

AN ACT REVISING THE METHOD FOR CHARGING UNEMPLOYMENT COMPENSATION BENEFITS TO THE EXPERIENCE RATING ACCOUNT OF A CLAIMANT'S EMPLOYER; CHANGING THE METHOD OF ASSIGNING CONTRIBUTION RATES TO NEW EMPLOYERS; AND AMENDING SECTIONS 39-51-1212, 39-51-1214, AND 39-51-1217, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-1212, MCA, is amended to read:

**"39-51-1212. Experience rating for governmental entities.** (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

*(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on*

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*the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period."*

Section 2. Section 39-51-1214, MCA, is amended to read:

**"39-51-1214. Benefit payments chargeable to employer experience rating accounts.** *(1) Except for cost reimbursement, benefits* paid shall be charged to the account of *each of* the *claimant's base period* employers. *The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.*

*(2)* No charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

*(a)* if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

*(b)* if paid in accordance with the extended benefit program triggered by either national or state indicators; *or*

*(c) if the base period employer continues to provide employment with no reduction in hours or wages."*

Section 3. Section 39-51-1217, MCA, is amended to read:

**"39-51-1217. Schedule of rates assigned based on trust fund reserve.** (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of December 31 prior to the rate year to total wages in covered employment for the 12-month period prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible, unrated, and deficit employers, based upon their experience as defined in this section.

*(4) For the calendar year 1990 and each year thereafter, any employer classified as unrated must be assigned a rate equal to the average rate of contributions paid by employers in the same major industrial classification for the calendar year preceding the computation date, plus an adjustment for the difference between the average tax rate assigned for the previous calendar year and the average rate in effect for the current calendar year. At no time may an unrated employer be assigned a rate lower than 1%. The computation of the average rate of contributions in a major industrial classification must exclude those employer accounts that are not eligible for the computation of an experience rating solely by reason of insufficient experience. The department shall develop the major industrial classifications for the state and shall annually determine the contribution rate for each classification."*

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Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 7, 1989.

# CHAPTER NO. 51

[HB 150]

AN ACT REQUIRING REPURCHASE OF THE INVENTORY OF CANCELED DEALERSHIPS IN MOTORCYCLES, MOTOR-DRIVEN CYCLES, RECREATIONAL VEHICLES, QUADRICYCLES, SNOWMOBILES, OFF-HIGHWAY VEHICLES, AND BOATS AND ENGINES; AMENDING SECTION 30-11-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-11-701, MCA, is amended to read:

**"30-11-701. Definitions.** As used in this part, the following definitions apply:

(1) "Current net price" means:

(a) with respect to a dealership contract, the price listed in the wholesaler's, manufacturer's, or distributor's price list or catalog in effect at the time a dealership contract is discontinued or, if none is then in effect, the last available price so listed; and

(b) with respect to a distribution contract, the price listed in the manufacturer's or distributor's price list or catalog in effect at the time a distribution contract is discontinued or, if none is then in effect, the last available price so listed.

(2) "Dealership contract" means a written contract between a retailer and a wholesaler, manufacturer, or distributor in which the retailer becomes a dealer in goods sold by the wholesaler, manufacturer, or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(3) "Distribution contract" means a written contract between a wholesaler and a manufacturer or distributor in which the wholesaler becomes a dealer in goods sold by the manufacturer or distributor, evidenced by a franchise agreement, sales agreement, security agreement, or other similar agreement or arrangement.

(4) "Inventory" means:

(a) farm implements, machinery, attachments, and repair parts;

(b) industrial and construction equipment and repair parts;

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(c) automobiles, trucks, and repair parts sold by an automobile or truck dealer as defined in 61-1-314;

*(d) motorcycles, motor-driven cycles, recreational vehicles, and quadricycles, as those terms are defined in Title 61, chapter 1, part 1, and repair parts;*

*(e) snowmobiles, as defined in 23-2-601, and repair parts;*

*(f) off-highway vehicles, as defined in 23-2-801, and repair parts; and*

*(g) vessels, as defined in 23-2-502, detachable motors or engines used to propel vessels, and repair parts.*

(5) "Net cost" means:

(a) with respect to a dealership contract, the price actually paid for an inventory item by the retailer to the wholesaler, manufacturer, or distributor, plus applicable freight costs paid by or charged to the retailer; and

(b) with respect to a distribution contract, the price actually paid for an inventory item by the wholesaler to a manufacturer or distributor, plus applicable freight costs paid by or charged to the wholesaler.

(6) "Retailer" or "retail dealer" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to the general public.

(7) "Wholesaler" means any individual, partnership, association, or corporation engaged in the business of selling inventory, as defined in this section, to retailers."

Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 7, 1989.

## CHAPTER NO. 52

[HB 160]

AN ACT TO PROVIDE THAT THE COUNTY ATTORNEY IS THE LEGAL ADVISER TO A COUNTY WEED DISTRICT; AND AMENDING SECTIONS 7-4-2711 AND 7-22-2103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2711, MCA, is amended to read:

**"7-4-2711. County attorney to be legal adviser of county and other subdivisions.** (1) The county attorney is the legal adviser of the

board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts in unincorporated territories, towns, or villages within his county;

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee; *and*

*(d) when requested by a weed district pursuant to 7-22-2103, act as counsel, without fee.*"

Section 2. Section 7-22-2103, MCA, is amended to read:

"**7-22-2103. District weed board.** (1) The commissioners shall appoint a district weed board consisting of three or five members, and:

(a) if a three-member board, two members shall be rural agricultural landowners within the district and one shall be a member-at-large; or

(b) if a five-member board, three members shall be rural agricultural landowners within the district, one member shall be a resident of a city or town within the district, and one shall be a member-at-large.

(2) The county extension agent in each county and other interested individuals may be appointed to serve as nonvoting members of that district's weed board.

(3) The board members are public officers.

*(4) The board may call upon the county attorney for legal advice and services as it may require.*"

Approved March 7, 1989.

# CHAPTER NO. 53

[HB 170]

AN ACT TO MAKE DISCRETIONARY RATHER THAN MANDATORY THE DUTIES OF THE DEPARTMENT OF AGRICULTURE WITH RESPECT TO CROP INSECT DETECTION AND MANAGEMENT; AMENDING SECTION 80-7-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-7-503, MCA, is amended to read:

"**80-7-503. Duties of department.** The department *may*:

(1) develop and publish a list of pesticides approved for control of insect pests;

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(2) develop and publish technical guidelines on techniques of controlling insect pests;

(3) notify a county of its survey results and state whether the infestation is normal or serious;

(4) review and comment on or review and approve all county agricultural insect pest management plans as provided by local government statutes and consider whether the plan conforms to the technical guidelines of the department and whether implementation of the plan will probably counteract the condition of insect pest infestation in a timely and proper manner;

(5) consider whether an alternative control program would be as efficient as spraying on a ratio of total costs to total benefits and provide the county with a summary of its findings prior to conducting or approving any cropland spraying program. If the alternative control program is considered adequate, the department may conduct or approve such a program."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 7, 1989.

# CHAPTER NO. 54

[SB 457]

AN ACT ALLOWING A COUNTY, CITY, OR TOWN TO ISSUE REFUNDING BONDS AT AN INTEREST RATE IN EXCESS OF THE RATE ON THE REFUNDED BONDS IF THE REFUNDING RESULTS IN A REDUCTION OF TOTAL DEBT SERVICE COST; AMENDING SECTIONS 7-7-2304, 7-7-4304, 7-7-4502, AND 7-7-4610, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-7-2304, MCA, is amended to read:

"**7-7-2304. Interest rate on refunding general obligation bonds.** *(1) Except as provided in subsection (2),* refunding bonds *may not* be issued unless *the* refunding bonds bear interest at a rate of at least ½ of 1% less than the outstanding bonds which are to be refunded.

*(2) Refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the county.*"

Section 2. Section 7-7-4304, MCA, is amended to read:

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**"7-7-4304. Interest rate on refunding general obligation bonds.** *(1) Except as provided in subsection (2),* refunding bonds *may not* be issued unless *the* refunding bonds bear interest at a rate of at least ½ of 1% less than the interest rate of the outstanding bonds to be refunded.

*(2) Refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the city or town."*

Section 3. Section 7-7-4502, MCA, is amended to read:

**"7-7-4502. Interest rates on refunding revenue bonds.** (1) Except as provided in subsection (2), refunding bonds *may* not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least ⅜ of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if:

(a) they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient;

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding; *or*

*(c) the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality."*

Section 4. Section 7-7-4610, MCA, is amended to read:

**"7-7-4610. Details relating to refunding revenue bonds.** The refunding bonds may, as provided by resolution of the governing body of the municipality:

(1) be issued in one or more series, bear such date or dates, and mature at such time or times, not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, and, in any event, not exceeding 40 years from their respective dates;

(2) bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, *except that refunding bonds may bear interest in excess of the rate on the refunded bonds if the issuance of the refunding bonds, including the total costs of refunding the bonds, results in a reduction of total debt service cost to the municipality*;

(3) be in such denomination or denominations and be in such form, either coupon or registered;

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(4) carry such registration and conversion privileges;

(5) be executed in such manner;

(6) be payable in such medium of payment and at such place or places;

(7) be subject to such terms of redemption, with or without a premium;

(8) be declared or become due before the maturity date thereof;

(9) provide for the replacement of mutilated, destroyed, stolen, or lost bonds;

(10) be authenticated in such manner and upon compliance with such conditions; and

(11) contain such other terms and covenants."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 8, 1989.

## CHAPTER NO. 55

[HB 334]

AN ACT CLARIFYING THAT SUSPENSION OR REVOCATION OF A DRIVER'S LICENSE IS EFFECTIVE UNTIL THE DRIVER HAS PAID A $50 FEE; AND AMENDING SECTION 61-2-107, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-2-107, MCA, is amended to read:

**"61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 *must remain suspended or revoked* until the driver has paid to the department a fee of $50 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit the fees collected under subsection (1) in the general fund."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 10, 1989.

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# CHAPTER NO. 56

[HB 314]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM; CLARIFYING THE DEFINITION OF "EARNED COMPENSATION" TO INCLUDE AMOUNTS PAID UNDER CAFETERIA PLANS; ALLOWING SUBSTITUTE TEACHERS TO QUALIFY SUBSTITUTE SERVICE; CLARIFYING AND DEFINING THE FIRST FULL YEAR'S TEACHING SALARY USED IN THE CALCULATION OF CREDITABLE SERVICE; CLARIFYING THE CALCULATION OF SURVIVOR BENEFITS; INCREASING THE MINOR CHILD BENEFIT FROM $100 TO $200 A MONTH; AMENDING SECTIONS 19-4-101, 19-4-302, 19-4-401, 19-4-1001, AND 19-4-1002, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-4-101, MCA, is amended to read:

**"19-4-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602. If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

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(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation, if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer must pay contributions on the termination pay according to the rates provided for in 19-4-602(1) and 19-4-605(1).

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member.

(b) For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement, *a cafeteria plan*, a tax sheltered annuity, *a* deferred compensation program, and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, except that any termination pay, as defined in subsection (5)(b), received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the

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provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302."

Section 2. Section 19-4-302, MCA, is amended to read:

**"19-4-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of:

(i) a vocational-technical center; or

(ii) a unit of the Montana university system and who has not elected to participate in the optional retirement program under Title 19, chapter 21;

(c) any person employed as a speech therapist, school nurse, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent,

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a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), (c), or (d) of this subsection (1);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), (c), or (d) of this subsection (1) since the time of such election, and who may thereafter elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for his eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for his creditable service totally paid by an employer as defined herein.

(3) (a) A substitute teacher:

(i) may elect to become an active member of the retirement system on the first day of employment in any fiscal year; or

(ii) shall become an active member of the retirement system on the 31st day of employment in any fiscal year if he has not elected membership under subsection (3)(a)(i).

(b) The employer shall give written notification to a substitute teacher on his first day of employment in any fiscal year of his option to elect membership under subsection (3)(a)(i).

*(4) A substitute teacher who did not elect membership under subsection (3)(a)(i) and subsequently becomes a member must be awarded creditable service for his substitute teaching service if he contributes:*

*(a) an amount equal to the combined employee and employer contributions that would have been made if he had elected membership; plus*

*(b) interest at the rate the contributions would have earned if they had been on deposit with the retirement system.*

*(5)* At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. All persons in similar circumstances shall be treated alike."

Section 3. Section 19-4-401, MCA, is amended to read:

**"19-4-401. Creditable service.** (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for

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his eligibility in 19-4-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-4-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-4-402;

(d) any service awarded for employment while on leave under 19-4-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-4-404;

(f) any employment service awarded by the retirement board under the provisions of 19-4-408;

(g) any service awarded by the retirement board for extension service employment under 19-4-410; and

(h) any service awarded for absence due to employment-related injury under 19-4-411.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

*(4) For a member completing only part-time service during the qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that he would have earned if his first year part-time salary had been full-time.*"

Section 4. Section 19-4-1001, MCA, is amended to read:

"**19-4-1001. Allowances for death of member.** (1) If a member dies before retirement, his accumulated contributions shall be paid to his estate or such person as he may have nominated by a written designation filed with the retirement board prior to his death in the manner prescribed by the board.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in 19-4-804(1) and section 5, Chapter 549, Laws of 1981, in the same manner as if the member elected option A provided for in 19-4-702(2)(a).

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(b) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total annuity payments made and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, a lump-sum death benefit of $500 is payable to his designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, the sum of *$200* per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday."

Section 5. Section 19-4-1002, MCA, is amended to read:

**"19-4-1002. Payments upon death of retiree.** (1) In the event of the death of a member after retirement, a death benefit of $500 is payable to his designated beneficiary.

(2) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of his death, the sum of *$200* per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Applicability.** [Sections 3(4) and 4] apply to minor children receiving benefits under 19-4-1001 and 19-4-1002 on or after July 1, 1989.

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Approved March 10, 1989.

## CHAPTER NO. 57

[HB 110]

AN ACT TO PROHIBIT EMPLOYEES OF THE DEPARTMENT OF HIGHWAYS AND PEACE OFFICERS FROM STOPPING RECREATIONAL VEHICLES FOR GROSS VEHICLE WEIGHT INSPECTIONS; AND AMENDING SECTIONS 61-1-132 AND 61-10-141, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-1-132, MCA, is amended to read:

**"61-1-132. Recreational vehicle.** The term "recreational vehicle" as used in 61-4-101 through 61-4-105 *and 61-10-141* includes travel trailers as

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defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use."

Section 2. Section 61-10-141, MCA, is amended to read:

**"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards.** (1) A peace officer, officer of the highway patrol, or employee of the department of highways may weigh any vehicle regulated by 61-10-101 through 61-10-110, *except recreational vehicles as defined in 61-1-132,* either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right-of-way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department of highways may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 8,000 pounds G.V.W. *and recreational vehicles as defined in 61-1-132 that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer,* to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) The department of highways shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of such joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of highways shall cooperate to assure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of highways shall designate employees as peace officers. The designated employees must be employed in the administration of the gross vehicle weight functions of the department of highways. Each employee so designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

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(f) make reasonable safety inspections of commercial motor vehicles utilized by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of such vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of highways has the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 10, 1989.

## CHAPTER NO. 58

[HB 180]

AN ACT ELIMINATING THE REQUIREMENT THAT COUNTY COMMISSIONERS OBTAIN THE CONSENT OF THE COUNTY ATTORNEY PRIOR TO EMPLOYING ANOTHER ATTORNEY TO PERFORM CIVIL LEGAL SERVICES; AND AMENDING SECTION 7-4-2708, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2708, MCA, is amended to read:

**"7-4-2708. Contract for services of any other attorney.** In any county, the county commissioners may employ any attorney licensed in Montana to perform any legal service in connection with the civil business of the county."

Approved March 10, 1989.

## CHAPTER NO. 59

[HB 90]

AN ACT EXEMPTING FROM PROPERTY TAXATION ALL HARNESS, SADDLERY, AND OTHER TACK EQUIPMENT; AMENDING SECTIONS 15-6-146 AND 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-146, MCA, is amended to read:

**"15-6-146. Class sixteen property — description — taxable percentage.** (1) Class sixteen property includes all property used for noncommercial purposes which is not real property or an improvement to real

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property and which is not included in another class or exempt from taxation under Title 15, chapter 6, part 2.

(2) Class sixteen property is taxed at 11% of its market value."

Section 2. Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

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(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

*(q) harness, saddlery, and other tack equipment; and*

*(r)* property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection *(1)(r)*, "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

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(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure. **(Subsection (1)(c) applicable to taxable years beginning after December 31, 1987—sec. 4, Ch. 455, L. 1987.)"**

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved March 10, 1989.

# CHAPTER NO. 60

[HB 196]

AN ACT ALLOWING THE DEPARTMENT OF HIGHWAYS FLEXIBILITY IN DOCUMENTING COMPLIANCE WITH EXPENDITURE REQUIREMENTS FOR FOOTPATHS AND BICYCLE TRAILS AND REVISING THOSE REQUIREMENTS; AND AMENDING SECTION 60-3-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 60-3-303, MCA, is amended to read:

**"60-3-303. Footpaths and bicycle trails to be established — funding.** (1) *The* highway commission or *a* county or city *with funds received* from the state highway commission state special revenue fund *may construct* footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road wherever a highway, road, or street is being constructed, reconstructed, or relocated. In addition, footpaths and bicycle trails *may* be established along all streets under state jurisdiction. Funds received from the state special revenue fund may also be expended to *construct* footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas *if* the construction *enhances* traffic safety and convenience. Footpaths and bicycle trails *may* be constructed along all sections of the national defense interstate highway system.

(2) Footpaths and trails *may* not be established under subsection (1) of this section:

(a) if the cost of establishing the paths and trails *is* excessively disproportionate to the need or probable use; or

(b) *if* sparsity of population, other available ways, or other factors indicate an absence of any need for the paths and trails.

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(3) The state highway commission shall *let to contract in any period of 5 consecutive fiscal years not* less than *an average of $200,000 per year for footpaths and bicycle trails. The department shall establish accounting procedures to document compliance with this subsection.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 10, 1989.

# CHAPTER NO. 61

[HB 94]

AN ACT TO PERMIT REGISTRATION OF MOTOR VEHICLES AS A FLEET.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Domicile" means the county in which a motor vehicle is most frequently used, dispatched, or controlled.

(2) "Fleet" means 100 or more motor vehicles owned or leased by a person operating the vehicles in this state.

Section 2. **Fleet registration — application — additions to and deletions from fleet.** (1) A person owning or leasing a fleet may apply to the department of highways to register the fleet annually through the department of highways in lieu of registering each motor vehicle in its domicile.

(2) The application for fleet registration must:

(a) be submitted to the department of highways prior to November 1 of each year;

(b) include a list of the motor vehicles in the fleet;

(c) include the current registration receipt for each motor vehicle; and

(d) include any other relevant information required by the department of highways.

(3) A motor vehicle may be added to the fleet.

(4) A motor vehicle may be removed from a fleet if the owner of the fleet surrenders to the department of highways the current registration receipt and the license plate for the vehicle no later than December 31. If the receipt or license plate has been lost or stolen, the owner shall submit an affidavit explaining why he is not able to surrender the receipt or license plate.

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Section 3. **Vehicles subject to staggered registration — fees and taxes — disposition.** (1) Any motor vehicle in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as part of the fleet on the following fleet renewal date. The department of highways shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid.

(2) (a) The department of highways shall compute fees and taxes due on each motor vehicle in the fleet as provided in part 5 of this chapter, based on its domicile.

(b) The department of highways shall also collect a registration fee of $7.50 for each motor vehicle in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain $4.50 of each registration fee for administrative costs and forward the remaining $3 to the state treasurer for deposit in the motor vehicle recording account of the state special revenue fund in lieu of the fee provided in 61-3-321(5).

(c) All fees and taxes must be paid no later than February 15 each year.

(d) The fees and taxes collected must be distributed by the department of highways as provided in 61-3-321 and part 5 of this chapter, based on the domicile of each motor vehicle.

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions of Title 61, chapter 3, part 3, apply to [sections 1 through 3].

Approved March 10, 1989.

# CHAPTER NO. 62

[HB 219]

AN ACT CLARIFYING FUNDING FOR THE STATE'S CONTRIBUTION TO THE MONTANA HIGHWAY PATROLMEN'S RETIREMENT SYSTEM; PROVIDING FOR THE STATUTORY APPROPRIATION OF CERTAIN FUNDS TRANSFERRED TO THE HIGHWAY PATROLMEN'S RETIREMENT PENSION TRUST FUND; AMENDING SECTIONS 17-7-502, 19-6-401, 19-6-404, AND 61-5-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by

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permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; *61-5-121;* 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 2. Section 19-6-401, MCA, is amended to read:

**"19-6-401. Payments into retirement fund.** All appropriations made by the state, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, all interest on and increase of the investments and moneys under this account, and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 *must* be paid to the *account.*"

Section 3. Section 19-6-404, MCA, is amended to read:

**"19-6-404. State's contribution.** The state of Montana shall annually contribute to the account an amount equal to 26.75% of the salaries paid to the highway patrolmen who are covered by this account from the *following sources:*

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*(1) an amount equal to 16.57% of salaries is payable from the same source that is used to pay compensation to the members; and*

*(2) an amount equal to 10.18% of salaries is payable from* a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121."

Section 4. Section 61-5-121, MCA, is amended to read:

**"61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 33 ⅓% of each driver's license fee and of each duplicate driver's license fee must be deposited into *an account in the state special revenue fund. The department shall transfer the funds from this account to the* Montana highway patrolmen's retirement pension trust fund *as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.*

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3 ⅓% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 23 ⅓% of each driver's license fee and of each duplicate driver's license fee and the amount of 35% of each motorcycle endorsement fee must be deposited into the state traffic education account.

(e) The amount of 40% of each driver's license fee and of each duplicate driver's license fee and the amount of 60% of each motorcycle endorsement fee must be deposited into the state general fund.

(f) The entire amount of each commercial vehicle operator's endorsement fee must be deposited into the motor vehicle recording account established in 61-3-108.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall

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deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the *account in the state special revenue fund as provided in subsection (1)(a)*, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(d), (1)(e), and (1)(f).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the *account in the state special revenue fund as provided in subsection (1)(a)*, the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), (1)(d), (1)(e), and (1)(f)."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 10, 1989.

# CHAPTER NO. 63

[HB 531]

AN ACT PERMITTING A SURVIVING SPOUSE WHO HAS REMARRIED TO RECEIVE A SERVICE, DISABILITY, OR SURVIVORSHIP ALLOWANCE UNDER THE MONTANA HIGHWAY PATROLMEN'S, MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 19-6-505, 19-9-804, 19-13-704, 19-13-901, AND 19-13-902, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-6-505, MCA, is amended to read:

**"19-6-505. Payment of retirement allowance.** (1) The department shall pay the service retirement allowance provided for in 19-6-502 to the retired patrolman for the remainder of his life.

(2) Upon the retired patrolman's death, the department shall pay the retirement allowance to the patrolman's surviving spouse, if there is one.

(3) (a) If upon the retired patrolman's death there is no surviving spouse or if the spouse dies, the department shall pay the retirement allowance as provided in subsection (3)(c) to the retired patrolman's child, if there is one, for as long as the child remains dependent as defined in 19-6-101.

(b) If there is more than one dependent child, the retirement allowance must be paid as provided in subsection (3)(c) to the children collectively. When a child no longer qualifies as dependent as defined in 19-6-101, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If upon the retired patrolman's death there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-6-602, the department shall pay to the designated beneficiary an amount equal to the retired patrolman's accumulated deductions less any retirement benefits paid to the member before his death.

(5) If the retired patrolman did not designate a beneficiary or if the beneficiary predeceased the retired patrolman, the amount provided in subsection (4) must be paid to the patrolman's estate."

Section 2. Section 19-9-804, MCA, is amended to read:

**"19-9-804. Amount of service retirement allowance — continuation of allowance after death of member.** (1) A police officer who is eligible under subsection (1) or (2) of 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of such allowance per year of additional service, up to a maximum of 60% of the final average salary.

(3) Upon the death of a police officer receiving a service retirement allowance under this section, his surviving spouse, if there is one, shall receive from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent children, then upon his death, if he leaves no surviving spouse or upon the death of the surviving spouse, the officer's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly payments a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent."

Section 3. Section 19-13-704, MCA, is amended to read:

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**"19-13-704. Amount of retirement allowance.** (1) (a) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 20 years of service and reaching age 50 as an active firefighter shall receive a service retirement allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(b) A member hired before July 1, 1981, who is eligible under 19-13-701 and who elects to retire after completing 10 years or more of service but has not both completed 20 years of service and reached age 50 as an active firefighter shall receive a service retirement allowance equal to 2% of the monthly compensation last received by the member for each year of service up to a maximum of 60% of his final monthly salary.

(i) If the member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter, the allowance prescribed in subsection (1)(b) must be made to the surviving spouse beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death. If there is no surviving spouse or if the surviving spouse dies and if the firefighter leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent as defined in 19-13-104.

(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).

(2) A member hired on or after July 1, 1981, who is eligible under 19-13-701 shall receive a service retirement allowance equal to 2% of his final average salary for each year of service up to a maximum of 30 years of service."

Section 4. Section 19-13-901, MCA, is amended to read:

**"19-13-901. Payment of service or disability allowance upon death of member.** A member's service or disability allowance shall be paid first to the member during his lifetime and, upon his death, to his surviving spouse. If upon a member's death he leaves no surviving spouse or upon the death of a surviving spouse, his allowance shall be paid to his dependent children as long as they remain dependent as defined in 19-13-104."

Section 5. Section 19-13-902, MCA, is amended to read:

**"19-13-902. Survivorship allowance.** (1) (a) Upon the death before retirement of an active member hired before July 1, 1981, his surviving spouse, if there is one, shall receive a survivorship allowance equal to one-half the monthly compensation last received by the member for his service as an active firefighter. If the member leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death of the surviving spouse, his dependent children shall collectively

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receive the same allowance that a surviving spouse would have received as long as the children remain dependent as defined in 19-13-104.

(b) If the deceased member completed over 20 years of service, the survivorship allowance provided in subsection (1)(a) must be increased at a rate of 1% for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member.

(2) Upon the death before retirement of a member hired on or after July 1, 1981, his surviving spouse, if there is one, shall receive a survivorship allowance equal to one-half of the member's final average salary. If the firefighter leaves one or more dependent children, then, upon his death if he leaves no surviving spouse or upon the death of the surviving spouse, his dependent children shall collectively receive the same allowance that a surviving spouse would have received, as long as the children remain dependent as defined in 19-13-104."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Effective date.** [This act] is effective July 1, 1989.

Section 8. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to surviving spouses who remarry on or after January 1, 1989.

Approved March 11, 1989.

# CHAPTER NO. 64

[HB 331]

AN ACT CHANGING THE ANNIVERSARY DATE FOR MOTOR VEHICLE REREGISTRATION TO THE LAST DAY OF THE MONTH; AMENDING SECTION 61-3-315, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-315, MCA, is amended to read:

**"61-3-315. Reregistration on anniversary date — department to make rules.** A vehicle that has once been registered for any of the periods *designated in 61-3-314 must* thereafter be reregistered for a like period on or before the anniversary date of the initial registration unless that period *is* changed as provided in this section. The anniversary date for reregistration *is* the *last* day of the month for the designated registration period. The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles. The department shall provide for simultaneous registration of multiple vehicles *that* have common ownership. The

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rules *must* provide for a change of the registration period to coincide with the date an owner desires to register his vehicles."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Applicability.** [This act] applies to reregistration of vehicles for periods beginning after December 31, 1989.

Approved March 11, 1989.

## CHAPTER NO. 65

[SB 58]

AN ACT TO REMOVE THE SUNSET PROVISIONS IN SECTIONS 2-15-216 AND 2-18-618(8), MCA, RELATING TO THE STATE EMPLOYEE SICK LEAVE ADVISORY COUNCIL AND THE SICK LEAVE FUND; REPEALING SECTION 3, CHAPTER 707, LAWS OF 1985; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 3, Chapter 707, Laws of 1985, is repealed.

Section 2. **Effective date.** [This act] is effective June 30, 1989.

Approved March 11, 1989.

## CHAPTER NO. 66

[HB 123]

AN ACT ADOPTING THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Uniform Enforcement of Foreign Judgments Act".

Section 2. **Definition.** In [this act], "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

Section 3. **Filing and status of foreign judgments.** A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment

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so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

Section 4. **Notice of filing.** (1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall file with the clerk of the court an affidavit setting forth the name and last-known post-office address of the judgment debtor and the judgment creditor. The affidavit must also include a statement that the foreign judgment is valid and enforceable, and the extent to which it has been satisfied.

(2) Promptly upon filing the foreign judgment and affidavit, the judgment creditor or someone on his behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to his attorney of record, if any, each at his last-known address by certified mail, return receipt requested. The notice must include the name and post-office address of the judgment creditor and the judgment creditor's attorney, if any, in this state. The judgment creditor shall file with the clerk of the court an affidavit setting forth the date upon which the notice was mailed.

(3) The proceeds of an execution must not be distributed to the judgment creditor earlier than 30 days after the date of mailing the notice of filing.

Section 5. **Stay.** (1) If the judgment debtor shows a district court that an appeal from the foreign judgment is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the district court any ground upon which enforcement of a judgment of any district court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of a judgment that is required in this state.

Section 6. **Fees.** Any person filing a foreign judgment shall pay to the clerk of court a fee of $60. Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court.

Section 7. **Optional procedure.** The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under [this act] remains unimpaired.

Section 8. **Uniformity of interpretation.** [This act] must be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Approved March 11, 1989.

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# CHAPTER NO. 67

[HB 305]

AN ACT REQUIRING APPOINTMENT OF A PERSON KNOWLEDGEABLE ABOUT INDIAN CULTURE AND FAMILY MATTERS TO CHILD PROTECTIVE TEAMS AND YOUTH PLACEMENT COMMITTEES; AND AMENDING SECTIONS 41-3-108 AND 41-5-525, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-3-108, MCA, is amended to read:

**"41-3-108. Child protective teams.** The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and his family. The supervisor of child protective services in a local service area or his designee shall serve as the team's coordinator. Members shall include:

*(a)* a social worker;

*(b)* a member of a local law enforcement agency;

*(c)* a representative of the medical profession;

*(d)* a county attorney; *and*

*(e) where an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.*"

Section 2. Section 41-5-525, MCA, is amended to read:

**"41-5-525. Youth placement committees — composition.** (1) In each judicial district, the department shall establish a youth placement committee for the purposes of recommending an appropriate placement of a youth referred to the department under 41-5-403 or committed to the department under 41-5-523.

(2) The committee consists of not less than five members, appointed by the department, and must include:

*(a)* a representative of the department;

*(b)* a representative of a county department of public welfare;

*(c)* a youth probation officer;

*(d)* a mental health professional;

*(e)* a representative of a school district located within the boundaries of the judicial district; *and*

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*(f) where an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.*

*(3)* Committee members serve without compensation."

Approved March 15, 1989.

## CHAPTER NO. 68

[HB 13]

AN ACT TO GENERALLY REVISE THE CRIME VICTIMS COMPENSATION ACT OF MONTANA TO CHANGE THE DEFINITION OF "CRIMINALLY INJURIOUS CONDUCT"; TO ALLOW THE DIVISION OF CRIME CONTROL TO OBTAIN CERTAIN MEDICAL REPORTS AND INSURANCE PAYMENT INFORMATION REGARDING A CLAIMANT; TO CLARIFY THAT FUNDING FOR THE PROGRAM MAY BE USED ONLY FOR THE PROGRAM; TO PROVIDE THAT NO FISCAL BIENNIUM END BALANCE MAY BE DEPOSITED IN THE GENERAL FUND; TO ALLOW PAYMENTS TO CERTAIN CLAIMANTS TO CONTINUE FOR MORE THAN 1 YEAR; AMENDING SECTIONS 50-16-530, 53-9-103, 53-9-104, 53-9-109, AND 53-9-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE FOR THE USE OF CERTAIN FUNDS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-16-530, MCA, is amended to read:

**"50-16-530. Disclosure without patient's authorization — other bases.** A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

*(5) in response to a request of the division of crime control for information under 53-9-104(2)(b); or*

*(6)* pursuant to compulsory process in accordance with 50-16-535 and 50-16-536."

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Section 2. Section 53-9-103, MCA, is amended to read:

**"53-9-103. Definitions.** As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct; or

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle *unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense.*

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

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(5) "Division" means the division of crime control of the department of justice.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) his good faith effort to prevent criminally injurious conduct; or

(c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct."

Section 3. Section 53-9-104, MCA, is amended to read:

**"53-9-104. Powers and duties of division.** (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to such crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to his actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the county as reimbursement for any public defender or any attorney appointed for the charged person must be deposited in the account established in 53-9-109.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

*(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant, provided that the division has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (b).*

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*(c)* subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

*(d)* take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge; and

*(e)* require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part."

Section 4. Section 53-9-109, MCA, is amended to read:

**"53-9-109. Crime victims compensation account.** There is a crime victims compensation account in the state special revenue fund. There shall be paid into this account [illegible] of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61, that are a result of citations or tickets issued by the highway patrol. *The money in the account is to be used solely for the purposes of this part, and no cash balance in the account at the end of a fiscal biennium may be deposited in the general fund.*"

Section 5. Section 53-9-128, MCA, is amended to read:

**"53-9-128. Compensation benefits.** (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 ⅔% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 ⅔% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments shall be made at the end of each 2-week period.

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(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding $2,000, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed $100 per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of a sexual crime for which a person has been charged and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of the crime.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed $500 for each person or $1,500 for a family."

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Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Effective date — retroactive applicability.** (1) [This act] is effective on passage and approval.

(2) [Section 5] applies retroactively, within the meaning of 1-2-109, to compensation claims filed after October 1, 1987.

Approved March 13, 1989.

# CHAPTER NO. 69

[HB 214]

AN ACT TO ALLOW THE APPOINTMENT OF A REPRESENTATIVE PAYEE TO APPLY FOR AND RECEIVE SILICOSIS PAYMENTS ON BEHALF OF A PERSON ELIGIBLE FOR SUCH PAYMENTS OR HIS BENEFICIARY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Representative payee — appointment — duties.** (1) The division of workers' compensation may appoint a representative payee to apply for and receive payment of silicosis benefits on behalf of a person eligible for such payments or his beneficiary if the division determines that such appointment is in the best interests of the person or his beneficiary. The representative payee may be a person, a corporation, a government agency, or an institution, including a nursing home or extended care facility providing care for the person or his beneficiary.

(2) To determine the best interests of the eligible person or his beneficiary for appointment of a representative payee, the division may consider:

(a) a court determination of incompetence;

(b) medical evidence;

(c) relevant information from any person, corporation, government agency, or institution; and

(d) other relevant information.

(3) The division shall:

(a) determine the circumstances in which a representative payee may be appointed;

(b) establish procedures for his appointment; and

(c) establish the representative payee's responsibilities.

(4) The representative payee shall:

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(a) act as a trustee to the person eligible for silicosis payments or his beneficiary in handling payments received; and

(b) maintain and expend such funds for the benefit and best interests of the eligible person or his beneficiary.

(5) The division's obligation under this chapter is fully discharged upon payment of benefits to the representative payee.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 73, part 1, and the provisions of Title 39, chapter 73, part 1, apply to [section 1].

Approved March 13, 1989.

## CHAPTER NO. 70

[HB 281]

AN ACT REQUIRING A NOTARY PUBLIC TO FILE HIS ADDRESS AND TELEPHONE NUMBER WITH THE OFFICE OF THE SECRETARY OF STATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Information to be filed.** A person appointed as a notary public shall file his address and telephone number with the office of the secretary of state. If the notary public changes his address or telephone number during his term of commission, he shall notify the office of the change.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 13, 1989.

## CHAPTER NO. 71

[HB 141]

AN ACT REGARDING THE CALCULATION OF RETIREMENT BENEFITS FOR CERTAIN PUBLIC ADMINISTRATORS WHO ELECT MEMBERSHIP IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTION 19-3-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Participation by public administrators.** (1) A public administrator appointed or elected under 7-3-441 or 7-4-2203 who is paid on a fee basis and who elects membership in the retirement system must

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be granted creditable service on an annual basis. The member shall receive 1 full year of creditable service for each full year in which he serves in office.

(2) For the purpose of calculating a retirement benefit under 19-3-904 or 19-3-1008 for a person who elects membership under subsection (1), "final compensation" means the member's highest average annual compensation during any three calendar years in office for which creditable service has been granted.

Section 2. Section 19-3-104, MCA, is amended to read:

**"19-3-104. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accumulated contributions" means the sum of all the contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Actuary" means the actuary retained by the board in accordance with 19-3-305.

(4) "Additional contributions" means contributions by members under the provisions of 19-3-702.

(5) "Annuity" means payments for life derived from contributions made by a member as provided in this chapter.

(6) "Beneficiary" means the person so designated pursuant to part 13 of this chapter.

(7) "Benefit" means the retirement allowance, survivorship allowance, death benefit, or refund of accumulated contributions provided by this chapter.

(8) "Board" means the public employees' retirement board provided for in 2-15-1009.

(9) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year.

(10) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(11) "Creditable service" means the aggregate of membership service and prior service.

(12) "Disability" and "incapacity for performance of duty", referred to herein as a basis of retirement, mean disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

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(13) "Employee" means any person who is employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402.

(14) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has contracted to come into the system.

(15) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board.

(16) "Final compensation", *except as provided in [section 1]*, means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(17) "Fiscal year" means any year commencing with July 1 and ending June 30 next following.

(18) "Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.

(19) "Member" means any person included in the membership of the retirement system set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406.

(20) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (9) of this section.

(21) "Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704.

(22) "Pension" means payments for life derived from contributions made from the state controlled funds or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter.

(23) "Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service

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rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana.

(24) "Regular interest" means interest at the rate set from time to time by the board.

(25) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this chapter.

(26) "Retirement allowance" means the periodic benefit payable following service, early, or disability retirement.

(27) "Retirement fund" means the public employees' retirement system pension trust fund.

(28) "Retirement system" means the public employees' retirement system created by this chapter.

(29) "Service" means employment of an employee, except as provided in 19-3-501 and 19-3-502.

(30) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in part 12 of this chapter.

(31) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, and the provisions of Title 19, chapter 3, apply to [section 1].

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved March 13, 1989.

## CHAPTER NO. 72

[HB 29]

AN ACT TO CLARIFY THE FUNCTIONS OF THE COUNTY ASSESSOR IN IDENTIFYING TAXPAYERS SUBJECT TO A TELEVISION DISTRICT TAX; TO PROVIDE A DEADLINE FOR CLAIMING AN EXEMPTION; AMENDING SECTIONS 7-13-2527 THROUGH 7-13-2529, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-13-2527, MCA, is amended to read:

**"7-13-2527. List of property owners.** (1) A copy of the order creating the district shall be delivered to the county assessor of each county within the district.

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(2) The assessor shall, on or before August 1 of any given year, prepare and certify a list of all persons owning *class four, class twelve, or class fourteen property* within such district and deliver a copy of such list to the board of trustees of said district."

Section 2. Section 7-13-2528, MCA, is amended to read:

**"7-13-2528. Financial administration of district.** (1) The board of trustees shall, from any list prepared by the county assessor as required by 7-13-2527, remove the names of any persons who have claimed exemption under this part *prior to September 1* and shall prepare a budget for the expenses for the next year.

(2) The budget, together with the list of such persons residing in the district and subject to the special tax after all exemptions have been allowed as provided in this part, shall be presented by September 1 to the board of county commissioners, who shall levy the tax requested by said trustees. The board shall levy such tax in accordance with the request herein mentioned. In preparing the budget, the board of trustees shall maintain separate budgets for television services and for FM translator services and shall specify the tax to be levied on property owners for these services. The tax shall be certified to the county clerk and recorder and entered on the assessment books as against such persons and collected by the county treasurer as all other taxes are collected.

(3) The county treasurer shall be the treasurer for said district and hold said taxes, as collected, in a separate fund to be disbursed by him upon warrants drawn by the trustees, at least two of whom shall sign any warrant for the disbursement of such funds by the county treasurer."

Section 3. Section 7-13-2529, MCA, is amended to read:

**"7-13-2529. Exemption for nonbenefited taxpayers.** (1) The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the television services of the television district, provided they file an affidavit setting forth any of the grounds above mentioned. The affidavit shall be filed *before September 1* with the board of trustees, who shall upon the receipt of such affidavit have the names of such persons so exempted from the tax for television services stricken from the list of taxpayers certified to the board of county commissioners. The exempted persons shall not be liable for such tax.

(2) A similar exemption is available with respect to FM translator services. The procedure provided in subsection (1) shall be utilized for the FM exemption.

(3) Any person or persons who shall make a false or fraudulent claim for exemption as provided in this section shall be guilty of a misdemeanor."

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Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Applicability date.** [This act] applies to tax years beginning after December 31, 1989.

Approved March 13, 1989.

# CHAPTER NO. 73

[HB 235]

AN ACT PERMITTING CERTAIN VESTED MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PURCHASE ADDITIONAL SERVICE FOR THE PURPOSE OF CALCULATING THEIR RETIREMENT ALLOWANCES; AMENDING SECTIONS 19-3-904, 19-3-906, AND 19-3-1008, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Election to purchase additional service.** (1) At any time before retirement, a person who became a member of the retirement system before July 1, 1989, and who has 5 years or more of membership service may make a written election with the board to purchase additional service for the purpose of calculating his retirement allowance. Except as provided in subsection (3), the member may purchase 1 year of additional service for each 5 years of membership service that he has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service purchased under this section, a member shall contribute to the retirement fund an amount equal to his normal compensation for the 12-month period immediately preceding the date he elects to purchase the service multiplied by the combined employee and employer contribution rates on the date he elects to purchase the service. Contributions may be made in a lump-sum payment or in installments as agreed upon by the member and the board.

(3) (a) Except as provided in subsection (b), after January 1, 1990, a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section may not be used to qualify a member for service retirement.

Section 2. Section 19-3-904, MCA, is amended to read:

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**"19-3-904. Amount of retirement allowance.** (1) The annual amount of retirement allowance payable to a member following his service retirement is the sum of (a), (b), and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) one-sixtieth of his final compensation multiplied by the number of years of his creditable service *and additional service purchased under [section 1]*;

(c) any retirement allowance payable under 19-3-905.

(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member."

Section 3. Section 19-3-906, MCA, is amended to read:

**"19-3-906. Early retirement allowance.** (1) The annual amount of retirement allowance payable to a member following his early retirement is the actuarial equivalent of the accrued portion of the service retirement allowance which would have been payable to him commencing at age 60 or upon completion of 30 years of creditable service pursuant to 19-3-904.

(2) The early retirement allowance shall be determined as prescribed in 19-3-904 with the exception that the allowance must be reduced as follows:

(a) by ½ of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service.

*(3) The actuarial reduction provided for in this section must be adjusted for any additional service purchased under [section 1].*"

Section 4. Section 19-3-1008, MCA, is amended to read:

**"19-3-1008. Allowance for nonduty-related disability.** (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (a), (b), and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

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(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is the greater of (i) or (ii) as follows:

(i) a pension which, together with the annuity provided under subsection (b), shall make the retirement allowance equal to 90% of one-sixtieth of his final compensation multiplied by his years of creditable service *and additional service purchased under [section 1]*;

(ii) a retirement allowance equal to 25% of his final compensation.

(2) Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, part 5, and the provisions of Title 19, chapter 3, part 5, apply to [section 1].

Section 7. **Coordination instruction.** If House Bill No. 234 is passed and approved, the employee and employer contribution rates provided for in [section 1(2)] are the rates in effect on and after July 1, 1993, if a member purchases service under [section 1] before July 1, 1993.

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved March 13, 1989.

## CHAPTER NO. 74

[HB 154]

AN ACT TO ALLOW THE WORKERS' COMPENSATION JUDGE TO ISSUE A STAY OF EXECUTION OF A JUDGMENT OR ORDER PENDING POSTTRIAL MOTIONS AND APPEAL; TO ALLOW EITHER THE WORKERS' COMPENSATION JUDGE OR THE SUPREME COURT TO GRANT A STAY OF EXECUTION DURING APPEAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Stay pending posttrial motions and appeal.** (1) Upon the filing of a judgment or order of the workers' compensation judge, a party may apply to the workers' compensation judge, upon notice or ex parte, for a stay of execution of the judgment or order. The stay may be for a period of time and be under conditions as the judge considers proper. A stay of execution under this subsection may not extend for more than 30 days following the judge's disposition of posttrial motions.

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(2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 29, and the provisions of Title 39, chapter 71, part 29, apply to [section 1].

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Retroactive applicability.** [This act] is procedural in nature and applies retroactively, within the meaning of 1-2-109, to any case pending before the workers' compensation judge that has not been appealed to the Montana supreme court on or before [the effective date of this act].

Approved March 13, 1989.

## CHAPTER NO. 75

[HB 121]

AN ACT RELATING TO THE OPERATION OF FIRE SERVICE AREAS; PROVIDING THAT THE FIRE CHIEF OF A FIRE SERVICE AREA OR FIRE COMPANY AND HIS DEPUTY HAVE THE SAME AUTHORITY TO ENTER PROPERTY TO FIGHT FIRES AS COUNTY AND DISTRICT RURAL FIRE CHIEFS; PROVIDING THAT THE CHIEF, DEPUTY, FIRE COMPANY, AND FIRE SERVICE AREA HAVE THE SAME IMMUNITY FROM SUIT RESULTING FROM THE SUPPRESSION OF FIRES AS DO COUNTY AND RURAL FIRE DISTRICTS; PROVIDING FOR THE ELECTION OF TRUSTEES OF A FIRE SERVICE AREA IN THE SAME MANNER AS FOR A RURAL FIRE DISTRICT; REQUIRING A TWO-THIRDS VOTE FOR IMPOSITION OF GOVERNMENTAL IMMUNITY FROM SUIT; AND AMENDING SECTIONS 7-33-2208, 7-33-2403, AND 7-33-2404, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-33-2208, MCA, is amended to read:

**"7-33-2208. Fire control powers — liability.** (1) Any county rural fire chief, district rural fire chief or his deputy, *or fire service area or fire*

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*company fire chief or his deputy* may enter private property or direct the entry of fire control crews for the purpose of suppressing fires.

(2) A chief or deputy and the county, rural district, *fire company, or fire service area* are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this section."

Section 2. Section 7-33-2403, MCA, is amended to read:

**"7-33-2403. Operation of fire service area.** (1) Whenever the board of county commissioners has established a fire service area, the commissioners may:

(a) govern and manage the affairs of the area;

(b) appoint five qualified trustees to govern and manage the affairs of the area*; or*

*(c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term of office and procedures for nomination and election are the same as those provided for election of rural fire district trustees in 7-33-2106.*

(2) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 and 7-33-2106 shall apply, except that the trustees shall prepare annual budgets and request a schedule of rates therefor."

Section 3. Section 7-33-2404, MCA, is amended to read:

**"7-33-2404. Financing of fire service area — fee on structures.** (1) In the resolution creating the fire service area and by resolution as necessary thereafter, the board of county commissioners shall establish a schedule of rates to be charged owners of structures that are benefited by the fire services offered by the fire service area.

(2) The rates must be applied on a fair and equal basis to all classes of structures benefited by the fire service area.

(3) The board of county commissioners shall collect the funds necessary to operate the fire service area by charging the area rate as a special assessment on the owners of structures and collect the assessments with the general taxes of the county. The assessments are a lien on the property so assessed.

(4) The board of county commissioners or the trustees, if the *fire service area is governed by* trustees under 7-33-2403, may pledge the income of the fire service area to secure financing necessary to procure fire equipment and buildings to house fire equipment. The outstanding amount of such indebtedness may not exceed 7% of the taxable valuation of the area."

Section 4. **Requirements for approval of governmental immunity from suit — severability.** Because the amendment to 7-33-2208(2) provides governmental immunity from suit for injury to a person or property, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house for the enactment of the amendment to 7-33-2208(2). If [this act] is not approved by the required vote, the

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amendment to 7-33-2208(2) is void. The remaining sections and amendments to 7-33-2208 are valid and remain in effect in all valid applications upon enactment.

Approved March 13, 1989.

# CHAPTER NO. 76

[HB 168]

AN ACT PROVIDING THAT IF A PERSON SERVING A SENTENCE IS AGAIN CONVICTED, THE TWO SENTENCES ARE SERVED CONSECUTIVELY UNLESS THE COURT ORDERS OTHERWISE; AND AMENDING SECTION 46-18-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-18-401, MCA, is amended to read:

**"46-18-401. Consecutive sentences.** (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term *may not* be merged in the other term; and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation *may not* be merged in any new sentence of commitment or probation.

(2) The court, *whether or not it merges* the sentences, shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite *any sentence that is* merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses *must* run *consecutively* unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."

Approved March 13, 1989.

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# CHAPTER NO. 77

[HB 237]

AN ACT TO ALLOW THE CLERK OF A SCHOOL DISTRICT TO PUBLISH NOTICE OF THE FILING OF THE PRELIMINARY BUDGET IN THE NEWSPAPER THAT THE TRUSTEES OF THE DISTRICT DETERMINE TO HAVE THE WIDEST CIRCULATION IN THE DISTRICT; AND AMENDING SECTION 20-9-115, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-115, MCA, is amended to read:

**"20-9-115. Notice of preliminary budget filing and final budget meeting.** Between July 10 and July 20 of each year, the clerk of each district shall publish notice one time, in the *local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district,* stating that the preliminary budget for the district for the school fiscal year just beginning, as prepared and adopted by the trustees, is on file in his office and open to inspection by all taxpayers. The notice *must* also state the time and place that the trustees will meet on the fourth Monday in July for the purpose of considering and adopting the final budget of the district, that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and that any taxpayer in the district may appear at *the* meeting and be heard for or against any part of the budget."

Approved March 13, 1989.

# CHAPTER NO. 78

[HB 182]

AN ACT TO AUTHORIZE THE DISCONTINUANCE OF A MUNICIPAL STREET OR ALLEY UPON A WRITTEN PETITION BY MORE THAN 50 PERCENT OF THE OWNERS AND UPON APPROVAL OF THE DISCONTINUANCE BY A MAJORITY VOTE OF THE MUNICIPAL COUNCIL; AND AMENDING SECTION 7-14-4114, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-14-4114, MCA, is amended to read:

**"7-14-4114. Procedure to discontinue streets.** (1) The council may discontinue a street or alley or any part thereof in a city or town, if it can be done without detriment to the public interest, *upon:*

*(a) a petition in writing of all owners of lots on the street or alley; or*

*(b) (i) a petition in writing of more than 50% of the owners of lots on the street or alley; and*

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*(ii) approval by a majority vote of the council.*

(2) Where the street or alley is to be closed for school purposes, *the council may discontinue the street or alley upon* a petition signed by 75% of the lot owners on the whole street or alley to be closed.

(3) Before acting upon such petition, a notice must be published or posted in three public places, stating when such petition will be acted on and what street or alley or part thereof is asked to be vacated. Such notice must be published in a newspaper or posted at least 1 week before the petition is acted on."

Approved March 13, 1989.

# CHAPTER NO. 79

[HB 178]

AN ACT CLARIFYING THE LAW MANDATING THE REPORTING OF SUSPECTED CHILD ABUSE OR NEGLECT; PROVIDING THAT PERSONS REQUIRED TO REPORT SHALL REPORT SUSPECTED ABUSE OR NEGLECT; AND AMENDING SECTION 41-3-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-3-201, MCA, is amended to read:

"**41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, *as a result of information they receive* in their professional or official capacity, *that a child* is abused or neglected, they shall report the matter promptly to the department of family services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

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(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter."

Approved March 13, 1989.

# CHAPTER NO. 80

[HB 381]

AN ACT REQUIRING INSURERS AND HEALTH SERVICE CORPORATIONS TRANSACTING HEALTH INSURANCE BUSINESS IN THIS STATE TO PROVIDE COVERAGE FOR THE TREATMENT OF PHENYLKETONURIA; AMENDING SECTION 33-31-102, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, phenylketonuria is a rare, inherited genetic disease afflicting persons with the inability to metabolize an essential amino acid that is found in most food proteins; and

WHEREAS, maintaining a normalized blood level of phenylalanine is the only treatment of the disease; and

WHEREAS, without this treatment patients suffer severe mental and physical difficulties; and

WHEREAS, because not all costs of treating phenylketonuria are covered by health care insurance.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Coverage for phenylketonuria treatment.** (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state and that provides coverage for a family member of

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the insured or subscriber must provide coverage for the treatment of phenylketonuria.

(2) For the pupose of this section, "treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(3) These services are subject to the terms of the applicable group or individual disability policy, certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

Section 2. Section 33-31-102, MCA, is amended to read:

**"33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Agent" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction; *and*

*(i) treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary*

*formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.*

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Department of health" means the department of health and environmental sciences provided for in 2-15-2101.

(5) "Director" means the director of the department of health and environmental sciences provided for in 2-15-2102.

(6) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(7) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(8) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(9) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(10) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

(11) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

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(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(12) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(13) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or nurse specialist as specifically listed in 37-8-202 who treats any illness or injury within the scope and limitations of his practice or other person who is licensed or otherwise authorized in this state to furnish health care services.

(14) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 3. **Applicability.** [This act] applies to policies or contracts delivered or issued for delivery or renewed in this state on or after January 1, 1990.

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Approved March 13, 1989.

# CHAPTER NO. 81

[HB 27]

AN ACT MAKING A SEXUAL CRIME THAT RESULTS IN THE DEATH OF A MINOR AN AGGRAVATING CIRCUMSTANCE IN DECIDING WHETHER TO IMPOSE THE DEATH PENALTY; AND AMENDING SECTION 46-18-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-18-303, MCA, is amended to read:

**"46-18-303. Aggravating circumstances.** Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

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(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

*(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age."*

Approved March 13, 1989.

# CHAPTER NO. 82

[SB 24]

AN ACT PROVIDING AN OPTIONAL METHOD FOR ENDORSEMENT OF A DOCUMENT BY A COUNTY CLERK AND RECORDER; AND AMENDING SECTION 7-4-2617, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2617, MCA, is amended to read:

**"7-4-2617. Procedure to record documents.** (1) When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, he must endorse upon the same the time it was received, noting the year, month, day, hour, and minute of its reception, and the reception of the instrument must be immediately entered in the county clerk and recorder's reception book.

(2) If the printed, written, or typed words or numbers are considered by the clerk and recorder to be illegible and not legibly reproducible, the clerk

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and recorder must affix to the recorded document a statement that the document is illegible and not legibly reproducible.

(3) The county clerk must record said instrument without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same and with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record and must note at the foot of the record the exact time of its reception.

(4) The county clerk must also endorse upon each instrument, paper, or notice the time when and the book and pages *or document number* in which it is recorded and must thereafter deliver it, upon request, to the party leaving the same for record or to his order."

Approved March 13, 1989.

# CHAPTER NO. 83

[HB 5]

AN ACT TO GENERALLY REVISE AND CLARIFY THE MONTANA CODE ANNOTATED; AND DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 51ST LEGISLATURE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 1-11-301, MCA, is amended to read:

"**1-11-301. Publication and sale of Montana Code Annotated — free distribution.** (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as herein provided.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public shall be fixed by the legislative council but may not exceed the cost price plus 20%. All revenues generated from the sale of the Montana Code Annotated or ancillary publications shall be deposited in the state special revenue fund, from which fund appropriations may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state or *Montana* local governmental agencies that are supported by public funds shall be for the cost price of the sets.

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(5) (a) The Montana Code Annotated and supplements and other subsequent and ancillary publications except annotations shall be provided at no cost to the following:

(i) each library designated as a depository library under 22-1-214, one copy;

(ii) each library designated as a federation headquarters library under 22-1-402, one copy.

(b) The state law library in Helena shall be provided with four copies of the Montana Code Annotated and supplements including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection."

Section 2. Section 2-4-704, MCA, is amended to read:

**"2-4-704. Standards of review.** (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

*(a)* the administrative findings, inferences, conclusions, or decisions are:

*(i)* in violation of constitutional or statutory provisions;

*(ii)* in excess of the statutory authority of the agency;

*(iii)* made upon unlawful procedure;

*(iv)* affected by other error of law;

*(v)* clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

*(vi)* arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

*(b)* findings of fact, upon issues essential to the decision, were not made although requested."

Section 3. Section 2-15-122, MCA, is amended to read:

**"2-15-122. Creation of advisory councils.** (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law

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or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(2) Each advisory council created under this section shall be known as the ".... advisory council".

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102*(8)*.

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed $25 for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) name, in accordance with subsection (2) of this section;

(b) composition;

(c) names and addresses of the appointed members;

(d) purpose;

(e) term of existence, in accordance with subsection (10) of this section.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary."

Section 4. Section 2-15-1858, MCA, is amended to read:

**"2-15-1858. Board of physical therapy examiners.** (1) There is a board of physical therapy examiners.

(2) The board consists of five members appointed by the governor with the consent of the senate for a term of 3 years. The members are:

(a) three physical therapists licensed under Title 37, chapter 11, who have been actively engaged in the practice of physical therapy for the 3 years preceding appointment to the board;

(b) one physician licensed under Title 37, chapter 3, who has been actively engaged in the practice of medicine for the 3 years preceding appointment to the board; and

(c) one member of the general public who is not a physician or a physical therapist.

(3) Each member must have been a resident of Montana for the 3 years preceding appointment to the board.

(4) The Montana medical association may submit names of nominees under subsection (2)(b) to the governor as provided in 37-1-132.

(5) A vacancy on the board must be filled in the same manner as the original appointment. These appointments may only be made for the unexpired portions of the term.

(6) No member may be appointed for more than two consecutive terms.

(7) The governor may remove any board member for negligence in performance of any duty required by law and for incompetence or unprofessional or dishonorable conduct.

(8) A board member is not liable to civil action for any act performed in good faith in the execution of the duties required by Title 37, chapter 11.

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(9) The board shall provide for its organizational structure by rule, which shall include a chairman, vice-chairman, and secretary-treasurer.

(10) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 5. Section 2-18-501, MCA, is amended to read:

**"2-18-501. Meals, lodging, and transportation of persons in state service.** Every elected official, appointed members of boards, commissions, *or* councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $55 per day.

(b) All other elected state officials, appointed members of boards, commissions, *or* councils, department directors, and all other state employees shall be authorized the actual cost of lodging, not exceeding $24 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus $3 for the morning meal, $3.50 for the midday meal, and $8 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized the actual cost of lodging in addition to a meal allowance not to exceed $30 per day.

(b) All other elected state officials, appointed members of boards, commissions, *or* councils, department directors, and all other state employees shall be authorized the actual cost of lodging, not exceeding $50 per day, except as provided in subsection (3), plus $4 for the morning meal, $6.50 for the midday meal, and $12 for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) All other elected state officials, appointed members of boards, *commissions, or* councils, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight

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accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(6) The provisions of this section shall not be construed as affecting the validity of 5-2-301.

(7) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(8) All commercial air travel shall be by the least expensive class service available."

Section 6. Section 7-6-4304, MCA, is amended to read:

**"7-6-4304. Issuance of duplicate warrants and checks.** (1) A duplicate warrant or check may be issued by the appropriate municipal officer whenever an instrument drawn by him upon the municipality is lost or destroyed. The duplicate warrant or check must be in the same form as the original except that it must have plainly printed across its face the word "duplicate". Except as provided in subsection (2), no duplicate warrant or check may be issued or delivered unless the person entitled to receive it deposits with the issuing municipal officer a bond in double the amount for which the duplicate warrant or check is issued, conditioned to hold the *municipality* and its officers harmless on account of the issuance of the duplicate warrant or check.

(2) No bond of indemnity is required when:

(a) the payee is the U.S. government, a state of the United States, an agency, instrumentality, or officer of the U.S. government or of a state, county, city, city and county, town, district, or other political subdivision of a state, or an officer thereof;

(b) the owner or custodian is the state of Montana or an agency or officer thereof;

(c) the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the U.S. government or by the state of Montana;

(d) the amount of the lost or destroyed warrant or check is less than $100;

(e) it can be established that a crime has been committed and as a result of such crime the warrant or check was stolen or destroyed;

(f) it can be established that the warrant or check was mailed to an incorrect payee; or

(g) the payee is a vendor or contractor doing business with the municipality.

(3) Whenever the owner or custodian applies under the provisions of subsection (2)(e), (2)(f), or (2)(g), a stop-payment order must be placed on the original warrant or check by the municipality.

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(4) Whenever the owner or custodian applies under the provisions of subsection (2)(c), (2)(d), (2)(e), (2)(f), or (2)(g), the application must include an agreement to indemnify and hold harmless the municipality or its officers and employees from any loss resulting from the issuance of a duplicate warrant or check. Any loss incurred in connection with the issuance of a duplicate warrant or check must be charged against the account from which the payment was derived."

Section 7. Section 15-6-214, MCA, is amended to read:

**"15-6-214. (Temporary) Nonproducing manufacturing and railroad operating property — tax-exempt status.** (1) Improvements permanently affixed to real property that were constructed and operated for a manufacturing industry that has ceased production or as an improvement to a railroad's operating property that has ceased *operation*, for a period of at least 6 consecutive months, may be fully or partially exempted from taxation for each taxable year if the board of county commissioners finds that the improvements:

(a) were used by the manufacturing industry or a railroad;

(b) are no longer being used for production by the manufacturing industry or *operation by* a railroad;

(c) could be used for production or transportation in the future; and

(d) will be dismantled by the owner to avoid the payment of property taxes on the improvements.

(2) For the purposes of this section, "manufacturing industry" means an industry that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(3) For the purposes of this section, "railroad operating property" has the meaning provided in 15-23-202.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. In no case may the benefit described in subsection (1) apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or otherwise required under state law. **(Terminates December 31, 1989—sec. 3, Ch. 560, L. 1987.)"**

Section 8. Section 15-17-317, MCA, is amended to read:

**"15-17-317. Municipality as purchaser.** Whenever property has been struck off to the county at a tax sale under 15-17-214, is subject to the lien of delinquent special assessments, and has not been assigned under 15-17-214 or 15-17-323, at the request of the municipality the county treasurer shall assign all of the rights of the county acquired therein at the sale to the municipality upon payment of any delinquent taxes (excluding

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assessments) and costs, without penalty or interest. The duplicate certificate of sale must be delivered to the treasurer of the municipality and filed by him in his office. No charge may be made for the duplicate certificate when the municipality is the purchaser, and in such case the county treasurer shall make an entry "sold to the municipality" on the assessment book opposite the tax, and he must be credited with the delinquent amount thereof in the settlement. Property sold to the municipality must be held in trust by the municipality for the improvement fund into which the delinquent special assessments are payable."

Section 9. Section 15-17-318, MCA, is amended to read:

**"15-17-318. Assignment of municipality's interest.** (1) At any time after a parcel of land has been acquired by a municipality, as provided in 15-17-317, and has not been redeemed, the treasurer of the municipality shall assign all the rights of the municipality in the property to any person who pays:

(a) the purchase price paid by the municipality;

(b) the delinquent assessments;

(c) interest on the purchase price and delinquent assessments at the rate of 5/6 of 1% a month; and

(d) penalties and costs as provided by law.

(2) The treasurer of the municipality shall execute to such person a certificate of sale for the parcel, which may be in substantially the form provided in 15-17-212 for the assignment of the interests of the county. If the certificate of sale becomes lost or accidentally destroyed by the assignee, the treasurer of the municipality shall issue a duplicate certificate to the assignee after the assignee delivers to the treasurer evidence satisfactory to him, including an affidavit of the assignee, that the certificate has been lost or destroyed.

(3) An assignment by a municipality under this section discharges the trust created under 15-17-317. The municipality may also discharge the trust created under 15-17-317 by paying into the improvement fund the amount of the delinquent assessments and interest accrued thereon."

Section 10. Section 15-18-212, MCA, is amended to read:

**"15-18-212. Notice — proof of notice — penalty for failure to notify.** (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has

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been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, no assignment has been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk must provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 90 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), no additional notice need be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b), which failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall proceed to give notice in the manner provided in subsection (1)(a).

(b) Notice given under this subsection (3) must be given not less than 60 days or more than 90 days prior to the date on which the county treasurer will issue the tax deed.

(c) A purchaser or assignee who fails to give notice as required by subsection (1)(b), thereby forcing notification to be given under this subsection (3), must be charged a penalty of $500 plus all actual costs of notification incurred by the county proceeding under this subsection (3).

(4) The notice required under subsections (1) through (3) must be made by certified mail to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 90 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, publish once a week for 2 successive weeks, in the official newspaper of the county or such other newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1) through (3) and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) In all cases, proof of notice in whatever manner given must be filed by the county clerk, county treasurer, purchaser, or assignee, as appropriate, with the county clerk *within* 30 days following the mailing or publication of the notice. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification."

Section 11. Section 15-23-605, MCA, is amended to read:

**"15-23-605. Assessment of royalties.** (1) The amount of royalty received, valued as provided in 15-23-603(1)(a), less 70% of the amount of

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excise taxes paid by or withheld from the royalty owner as reported pursuant to 15-23-602*(1)(e)(iv)*, shall be considered net proceeds to the recipient and shall be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines.

(2) Net proceeds for interim production and new production, as defined in 15-23-601, includes royalties received without deduction for excise taxes."

Section 12. Section 15-24-1203, MCA, is amended to read:

**"15-24-1203. Privilege tax on gainful use of tax-exempt property — exceptions.** After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax. The tax may not be imposed upon the possession or other beneficial use of railroad right-of-way or track acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state retains ownership and the right-of-way *or* track is used exclusively for rail transportation."

Section 13. Section 15-25-122, MCA, is amended to read:

**"15-25-122. Disposition of proceeds.** (1) The department shall transfer all taxes collected pursuant to this chapter, less the administrative fee authorized in 15-25-111(1), to the state treasurer on a monthly basis.

(2) The state treasurer shall deposit one-half of the tax to the credit of the department of *family services* to be used for the youth evaluation program and chemical abuse aftercare programs.

(3) The treasurer shall credit the remaining one-half of the tax proceeds as follows:

(a) 85% to the department of justice to be used for grants to youth courts to fund chemical abuse assessments and the detention of juvenile offenders in facilities separate from adult jails; and

(b) 15% to the special law enforcement assistance account created in 44-13-101 for the activities described in 44-13-103."

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Section 14. Section 15-25-123, MCA, is amended to read:

**"15-25-123. Special revenue account.** (1) There is created a special revenue *account* to be called the dangerous drug tax administration *account.*

(2) All administrative fees collected under 15-25-111(1) shall be deposited by the department into the dangerous drug tax administration *account.*

(3) The money in the dangerous drug tax administration *account* may be expended by the department to administer the tax and pay any refund required by this chapter.

(4) The appropriation made in subsection (3) is a statutory appropriation as provided in 17-7-502."

Section 15. Section 15-30-117, MCA, is amended to read:

**"15-30-117. Net operating loss — computation.** (1) A net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) Additions to loss include:

(i) that portion of the federal income tax and motor vehicle *tax* allowed as a deduction under 15-30-121 or 15-30-131 which is attributable to income from a trade or business; and

(ii) wages and salaries allowed as a business deduction under 15-30-111(5).

(b) Reductions in the loss include:

(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);

(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as business income;

(iii) state income tax; and

(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 or as that section may be labeled or amended."

Section 16. Section 15-32-102, MCA, is amended to read:

**"15-32-102. Definitions.** As used in this part, the following definitions apply:

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(1) "Building" means a single or multiple dwelling, including a mobile home, or a building used for commercial, industrial, or agricultural purposes, which is enclosed with walls and a roof.

(2) "Capital investment" means any material or equipment purchased and installed in a building or land with or without improvements.

(3) "Energy conservation purpose" means one or more of the following results of an investment: reducing the waste or dissipation of energy or reducing the amount of energy required to accomplish a given quantity of work.

(4) "Passive solar system" means a direct thermal energy system that uses the structure of a building and its operable components to provide heating or cooling during the appropriate times of the year by using the climate resources available at the site. It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building.

(5) "Low emission wood or biomass combustion device" means a stove or furnace or a catalytic converter added to a stove or furnace which burns wood or other nonfossil biomass and which has an emission rate of less than 6 grams per hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves as adopted by the department of health and environmental sciences pursuant to 15-32-203.

(6) "Recognized nonfossil forms of energy generation" means:

*(a)* a system for the utilization of solar energy including passive solar systems, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources;

*(b) a system* for the production of electric power from solid wood wastes;

*(c)* a *low-emission* wood or biomass combustion device; *or*

*(d)* a small system for the utilization of water power by means of an impoundment not over 20 acres in surface area."

Section 17. Section 15-35-108, MCA, is amended to read:

**"15-35-108. Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

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(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 4 ½% to the state special revenue fund to the credit of the alternative energy research development and demonstration account;

(b) 20% to the state special revenue fund to the credit of the education trust fund account and 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the education trust fund account.

(c) 10% to the state special revenue fund for state equalization aid to public schools of the state;

(d) 1% to the state special revenue fund to the credit of the county land planning account;

(e) 1 ¼% to the credit of the renewable resource development bond fund;

(f) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(g) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(h) ½ of 1% to the state special revenue fund for conservation districts;

(i) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(j) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 18. Section 15-65-121, MCA, is amended to read:

**"15-65-121. (Temporary) Distribution of tax proceeds — general fund loan authority.** (1) The proceeds of the tax imposed by 15-65-111 must be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department is statutorily appropriated, as provided in 17-7-502, 2% of that account each reporting period for the costs of collecting and disbursing the proceeds of the tax. The balance of the tax proceeds received each reporting period and not

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deducted pursuant to the statutory appropriation for collection and disbursement is statutorily appropriated as provided in 17-7-502 and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, and to the university system, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program; and

(c) the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(c)(iii), 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide;

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the *regional nonprofit* tourism *corporation in the* region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section.

**15-65-121. (Effective July 1, 1989) Distribution of tax proceeds — general fund loan authority.** (1) The proceeds of the tax imposed by 15-65-111 must be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation is statutorily appropriated, as provided in 17-7-502, and must be

transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, and to the university system, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program; and

(c) the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(c)(iii), 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide;

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the *regional nonprofit* tourism *corporation in the* region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section."

Section 19. Section 16-1-409, MCA, is amended to read:

**"16-1-409. Failure to make beer tax returns — penalties.** (1) If any brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 *and* 16-1-408 *fails, neglects, or refuses* to make any return required by this code or *fails* to make payment of *the* tax within the time herein provided, the department shall, after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and, from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of tax due the state from *the* delinquent brewer or wholesaler.

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(2) The department shall add to the amount of tax due a penalty of 5% for the first failure, willful neglect, or refusal; 10% for the second; 15% for the third; and 25% for the fourth and each subsequent failure, neglect, or refusal.

*(3) The penalty provided for in subsection (2) is* in addition to the 5% penalty provided for nonpayment of *the* tax within the time provided.

*(4) The* tax and penalties bear interest at the rate of 1% per month from the date returns should have been made and *the* tax paid.

*(5)* The department shall then proceed to collect *the* tax with penalties and interest. Upon request of the department, it *is* the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect *the* tax.

*(6)* If all or part of the tax imposed upon a brewer or wholesaler by this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand thereafter filed or recorded.

*(7)* No action shall be maintained to enjoin the collection of *the* tax or any part thereof.

*(8)* Any tax owed by a brewer or wholesaler under this code not paid within the time provided shall be delinquent, and a penalty of 5% shall be added thereto. *The tax and penalty* bear interest at the rate of 1% per month from the date of delinquency until paid. Any brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow *the* examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed *is* guilty of a misdemeanor and upon conviction shall be fined in an amount not exceeding $1,000."

Section 20. Section 16-1-410, MCA, is amended to read:

**"16-1-410. Tax revenue allocation.** All revenue received from taxes on beer under 16-1-406 *and* 16-1-408 over and above $1.50 per barrel of 31 gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the state treasurer who shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it *may not* receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health."

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Section 21. Section 16-4-501, MCA, is amended to read:

**"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400; each subwarehouse, $400;

(c) each beer retailer, $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case *shall the fee* be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual fee for resort retail all-beverages licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such

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city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport shall be $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓% of any license fee delinquent on July 1 of the renewal year, 66 ⅔% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year."

Section 22. Section 16-6-314, MCA, is amended to read:

**"16-6-314. Penalty for violating code — revocation of license — penalty for violation by underage person.** (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as is herein otherwise provided.

(2) If a retail licensee is convicted of an offense under this code, his license shall be immediately revoked or, in the discretion of the department, such other sanction imposed as may be authorized under 16-4-406.

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(3) A person under 21 years of age who violates 16-3-301*(4)* or 16-6-305(3) is subject to the penalty provided in 45-5-624(2)."

Section 23. Section 17-5-704, MCA, is amended to read:

**"17-5-704. Investment of funds.** (1) Money in the coal severance tax bond fund, the coal severance tax permanent fund, and the coal severance tax income fund must be invested in accordance with the investment standards for coal severance tax funds except as provided in subsection (2). Income and earnings from all funds must be transferred to and retained in the coal severance tax income fund until appropriated by the legislature.

*(2)* Beginning on July 1, 1989, the legislature shall appropriate 15% of the income and earnings from all funds to be deposited to the coal severance tax permanent fund each year. The funds appropriated to the coal severance tax permanent fund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature."

Section 24. Section 18-2-122, MCA, is amended to read:

**"18-2-122. Plans to bear seal.** This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof *may* not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, wastewater disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the *professional* land surveyor for land surveying projects or licensed architect for architectural projects, as provided for the practice of the respective professions by Title 37."

Section 25. Section 19-4-706, MCA, is amended to read:

**"19-4-706. Exemption from taxation and legal process.** The pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for a *withdrawal* paid under 19-4-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-4-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 26. Section 20-4-111, MCA, is amended to read:

**"20-4-111. Emergency authorization of employment.** (1) Any district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of

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a valid teacher or specialist certificate as an instructor of pupils when such district cannot secure the services of a person holding a valid certificate. The person shall have previously held a valid teacher or specialist certificate or shall meet the standards of preparation prescribed by the policies of the board of public education for and during such emergency. Such emergency authorization of employment shall indicate:

(a) the district to which such authorization is issued;

(b) the person whom the district is authorized to employ;

(c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ such person is given; and

(d) the school fiscal year for which such emergency authorization of employment is given.

(2) Emergency authorization of employment of a person shall be valid for the school fiscal year identified on such authorization and may be renewed in accordance with the board of public education policies. A fee *not to exceed $4* and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for such person, a filing fee of *$4* shall be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110."

Section 27. Section 20-4-133, MCA, is amended to read:

**"20-4-133. Duties of the council.** (1) The council shall study and make recommendations to the board of public education in the following areas:

(a) teacher certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(b) administrator certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(c) specialist certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;

(d) feasibility of establishing standards of professional practices and ethical conduct;

(e) the status and efficacy of approved teacher education programs in Montana; and

(f) policies related to the denial, suspension, and revocation of *teacher, administrator, and specialist* certification and the appeals process. For the

purpose of preparing recommendations in this area, the council is authorized to review the individual cases and files that have been submitted to the board of public education.

(2) The council shall submit a written report annually to the board of public education with its recommendations for the above areas. The council may submit recommendations to the board of public education at other times that the council considers appropriate.

(3) The board of public education shall:

(a) at a regularly scheduled meeting, consider any recommendations and reports of the council; and

(b) approve, disapprove, or modify each recommendation of the council by majority vote of the board."

Section 28. Section 20-4-401, MCA, is amended to read:

**"20-4-401. Appointment and dismissal of district superintendent or county high school principal.** (1) The trustees of any high school district, except a county high school, and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school shall employ and appoint a district superintendent, except that they may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, such joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district shall separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees may jointly employ and appoint a district superintendent as allowed in *20-3-362*.

(4) The written contract of employment of a district superintendent or a county high school principal shall be authorized by the proper resolution of the trustees of the district or the joint board of trustees and executed in duplicate by the chairman of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. Such contract shall be for a term of not more than 3 years, and after the second successive contract, the contract shall be deemed to be renewed for a further term of 1 year from year to year thereafter unless the trustees shall, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of his existing contract. The trustees shall take such termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate his services at the

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expiration of his current contract not later than February 1 of the last year of such contract.

(5) Whenever a joint board of trustees employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies such person to hold such position becomes invalid, the trustees of the district or the joint board of trustees shall discharge such person as the district superintendent or county high school principal regardless of the unexpired term of his contract. The trustees shall not compensate him under the terms of his contract for any services rendered subsequent to the date of the invalidation of his teacher certificate.

(7) No district superintendent or county high school principal shall engage in any work or activity which the trustees may deem to be in conflict with his duties and employment as the district superintendent or county high school principal."

Section 29. Section 20-5-307, MCA, is amended to read:

**"20-5-307. Budgeting, levy requirement, and paying elementary tuition.** (1) The tuition amount that has been established in 20-5-305 shall be paid during the ensuing school fiscal year. The trustees of the elementary district shall include such amount in the tuition fund of the preliminary budget. If the trustees should fail to include such amount or any portion of it in the preliminary budget, they shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. Such adjustment shall not be subject to the budget adjustment provisions of 20-9-132.

(2) The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142. Such levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated moneys that may be realized in the tuition fund.

(3) The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification provided under the provisions of *20-5-306*. At least one-half of the payments must be made in December, and the remaining payments must be made by June 15 of the fiscal year."

Section 30. Section 20-9-352, MCA, is amended to read:

**"20-9-352. Permissive amount and permissive levy.** (1) Whenever the trustees of any district shall deem it necessary to adopt a general fund budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for such district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall

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adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. Such excess above the foundation program amount shall be known as the "permissive amount", and it shall be financed by a levy, as prescribed in 20-9-141, on the taxable value of all taxable property within the district, except for vehicles subject to taxation under 61-3-504(2), supplemented with any biennial appropriation by the legislature for this purpose. The proceeds of such an appropriation shall be deposited to the state special revenue fund.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the district, except for vehicles subject to taxation under 61-3-504(2), for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 4 mills on all taxable property in the district, except for vehicles subject to taxation under 61-3-504(2), for the purpose of funding the permissive amount of the district. The permissive levy in mills shall be obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 4 or by using the number of mills which would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537, and plus net proceeds taxes for interim production and new production, as defined in 15-23-601, is not sufficient to fund the permissive amount in full, the amount of the deficiency shall be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(3) The superintendent of public instruction shall, if the appropriation by the legislature for the permissive account for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium. The supplemental appropriation shall provide enough revenue to fund the permissive deficiency of the elementary and high school districts of the state. The proceeds of this appropriation shall be deposited to the state special revenue fund and shall be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2) of this section.

(4) Distribution under this section from the state special revenue fund shall be made in two payments. The first payment shall be made at the same time as the first distribution of state equalization aid is made after

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January 1 of the fiscal year. The second payment shall be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid state special revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 31. Section 20-25-229, MCA, is amended to read:

**"20-25-229. Montana seed laboratory.** (1) There is established as a part of the agricultural experiment station the Montana seed laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of grains and seeds as possible.

(3) The laboratory shall be under the general direction of the director of the agricultural experiment station."

Section 32. Section 23-2-502, MCA, is amended to read:

**"23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(8) "Lienholder" means a person holding a security interest.

(9) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

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(10) "Motorboat" means any vessel propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Owner" means a person, other than a *lienholder*, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(14) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(16) "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

(17) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

(18) "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(19) "Waters of this state" means any waters within the territorial limits of this state. **(Subsections (2), (3), (8), (9), and (16) effective July 1, 1988—sec. 8, Ch. 433, L. 1987.)"**

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Section 33. Section 23-2-507, MCA, is amended to read:

**"23-2-507. Penalty.** Violations of any section of this part, except 23-2-526(3), unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than $15 or more than $500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures, except those paid to a justice's court, shall be transmitted to the state treasurer, who shall deposit such fines and forfeitures in the motorboat account of *a special revenue* fund. The moneys shall be used only by the department for enforcement of this part, as amended."

Section 34. Section 23-2-513, MCA, is amended to read:

**"23-2-513. Dealer's identification number.** (1) A dealer or manufacturer may apply directly to the department of justice for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on his boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer or manufacturer.

(2) The application for a dealer's or manufacturer's identifying number must include his name and business address. Each dealer or manufacturer will have one identifying number assigned to his business.

(3) An application for dealer's ~~or~~ manufacturer's identifying number and certificate of number must be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

(4) The department of justice shall issue certificates of number for the identifying numbers assigned to a dealer or manufacturer in the same manner as provided in 23-2-512(1) and *(9)*, as amended, except that no boat may be described in the certificate and each certificate must state that the identifying number has been assigned to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on December 31 of the year for which it is issued.

(5) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 23-2-512*(9)*, as amended, except that the number may be temporarily attached. The last three letters shall be "DLR" for dealer and "MFR" for manufacturer. These letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(6) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer may display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(7) No dealer or manufacturer or employee of a dealer or manufacturer may use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection (1) of this section."

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Section 35. Section 23-2-807, MCA, is amended to read:

**"23-2-807. (Effective January 1, 1988) Penalty — disposition.** (1) The failure to display a current decal indicating that the fee in lieu of tax has been paid on the off-highway vehicle for the current year as provided in 23-2-804 is a misdemeanor punishable by a fine equal to five times the fee in lieu of tax that is due on the off-highway vehicle for the current year.

(2) All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the *special* revenue fund to the credit of the department to be used for off-highway vehicle safety and education."

Section 36. Section 23-5-601, MCA, is amended to read:

**"23-5-601. Short title.** This part shall be known and may be cited as the "Video *Gaming* Machine Control Law"."

Section 37. Section 25-13-613, MCA, is amended to read:

**"25-13-613. Property necessary to carry out governmental functions.** (1) In addition to the property mentioned in 25-13-609(1), there shall be exempt to all judgment debtors the following property:

(a) all fire engines, hooks, and ladders, with the cart, trucks, and carriages, hose, buckets, implements, and apparatus thereto appertaining, and all furniture and uniforms of any fire company or department organized under any laws of this state;

(b) all arms, uniforms, and accouterments required by law to be kept by any person and one gun to be selected by the debtor;

(c) all courthouses, jails, public offices, and buildings, lots, grounds, and personal property, the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to the courthouse, jail, and public offices belonging to any county of this state; and

(d) all cemeteries, public squares, parks, and places, public buildings, town halls, public markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining owned or held by any town or incorporated city or dedicated by such city or town to health, ornament, or public use or for the use of any fire or military company organized under the laws of the state.

(2) No article, however, or species of property mentioned in this section is exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage lien thereon, and no person not a bona fide resident of this state shall have the benefit of these exemptions."

Section 38. Section 27-2-205, MCA, is amended to read:

**"27-2-205. Actions for medical malpractice.** (1) Action in tort or contract for injury or death against a physician or surgeon, dentist, registered nurse, nursing home or hospital administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath,

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chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility, or licensed medical professional corporation, based upon alleged professional negligence or for rendering professional services without consent or for an act, error, or omission, shall, except as provided in subsection (2), be commenced within 3 years after the date of injury or 3 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs last, but in no case may such action be commenced after 5 years from the date of injury. However, this time limitation shall be tolled for any period during which there has been a failure to disclose any act, error, or omission upon which such action is based and which is known to *the plaintiff* or through the use of reasonable diligence subsequent to said act, error, or omission would have been known to him.

(2) Notwithstanding the provisions of 27-2-401, in an action for death or injury of a minor who was under the age of 4 on the date of his injury, the period of limitations in subsection (1) begins to run when the minor reaches his eighth birthday or dies, whichever occurs first, and the time for commencement of the action is tolled during any period during which the minor does not reside with a parent or guardian."

Section 39. Section 33-22-111, MCA, is amended to read:

**"33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies of disability insurance, including individual, group, and blanket policies, and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, dentist, osteopath, chiropractor, optometrist, *podiatrist*, psychologist, licensed social worker, licensed professional counselor, or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 40. Section 33-23-201, MCA, is amended to read:

**"33-23-201. Motor vehicle liability policies to include uninsured motorist coverage — rejection by insured.** (1) No motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle may be delivered or issued for delivery in this state, with respect to any motor vehicle registered and principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in 61-6-103, under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles

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because of bodily injury, sickness, or disease, including death, resulting therefrom, caused by an accident arising out of the operation or use of such vehicle. An uninsured motor vehicle is a land motor vehicle, the ownership, the maintenance, *or* the use of which is *not* insured or bonded for bodily injury liability at the time of the accident.

(2) The named insured shall have the right to reject such coverage. Unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer."

Section 41. Section 33-23-212, MCA, is amended to read:

**"33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty.** (1) Notwithstanding any other provision of this code, no cancellation by an insurer of a motor vehicle liability insurance policy may be effective prior to the mailing or delivery to the named insured, at the address shown in the policy, of a written notice of the cancellation stating *the date on which*, not less than 30 days after the date of such mailing or delivery, the cancellation *becomes* effective.

(2) No notice of cancellation of a policy to which 33-23-211 applies may be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason therefor must be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation must state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than 15 days prior to the effective date of cancellation, the insurer will specify the reason for such cancellation.

(3) Subsection (2) does not apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding $500 for each violation thereof."

Section 42. Section 37-1-101, MCA, is amended to read:

**"37-1-101. Duties of department.** In addition to the provisions of 2-15-121, the department of commerce shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

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(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules establishing expiration dates of licenses for barbers, barbershops, professional engineers, *professional* land surveyors, nursing home administrators, optometrists, plumbers, social workers, speech pathologists, audiologists, and radiologic technologists."

Section 43. Section 37-2-101, MCA, is amended to read:

**"37-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, or optometry and in such practice to administer or prescribe drugs.

(2) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to such pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (2), but such term does not include any device or any components of a device.

(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(4) "Pharmacy" means an establishment which engages in the sale of drugs requiring a prescription.

(5) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which such medical practitioner maintains an office for professional practice.

(6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but such term does not include a pharmacy.

(7) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

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(8) "State" means the state of Montana or any political subdivision thereof."

Section 44. Section 37-4-321, MCA, is amended to read:

**"37-4-321. Grounds for disciplinary proceedings — range of sanctions — recovery of costs.** (1) The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter or fine the licensee not to exceed $5,000 per incident for any of the following causes:

(a) physical or mental incompetence;

(b) malpractice;

(c) unprofessional conduct, as defined by rule of the board; or

(d) violation of any of the provisions of this chapter or rules or orders of the board.

(2) The board may, following a final determination resulting in any disciplinary action taken by the board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding incurred for the purposes of that disciplinary action. Fines and costs recovered must be deposited in the board's *special* revenue account."

Section 45. Section 37-6-311, MCA, is amended to read:

**"37-6-311. Refusal or revocation of license — investigation — reinstatement.** (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct. The department shall notify the applicant of the board's intent to deny, revoke, or refuse to renew a license by mailing a letter to the applicant's last-known address stating the board's intent and setting a time and place for a hearing. If the applicant fails without cause to appear at the hearing or if the board determines that the applicant is not entitled to a license, the board shall deny, revoke, or refuse to renew the applicant's license.

(2) The board may investigate whenever it is brought to its attention that a licensed podiatrist:

(a) is mentally or physically unable to engage safely in the practice of podiatry;

(b) has procured his license by fraud, misrepresentation, or through error;

(c) has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent;

(d) has a condition that impairs his intellect or judgment to the extent that it incapacitates him in the safe performance of his professional duties;

(e) has been found guilty of unprofessional conduct;

(f) has practiced podiatry while his license was suspended or revoked;

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(g) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(h) while under probation has violated its terms.

(3) The investigation shall be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. The investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies shall be released to the board on written request. If the board has reasonable cause to believe that the alleged conditions exist or that the alleged offenses were committed, the department shall mail to the person at his last-known address a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(4) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice podiatry in this state charging him with the commission of any of the offenses set forth in 37-6-310 or with any of the offenses or conditions set forth in subsection (1) or (2) of this section. The complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person complained against, at his last-known address, together with a written citation of the time and place of the hearing on the complaint.

(5) At the hearing the board shall adopt a resolution finding the person complained against guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-6-310 or subsection (1) or (2) of this section do not exist with respect to the person complained against or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-6-310 or in subsection (1) or (2) of this section do exist or the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(6) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent measures taken by the board with respect to that action.

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(7) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct or restored to good health and that he has not practiced podiatry in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced podiatry in this state during the term of suspension, the board shall revoke the license at a hearing held in accordance with the notice and procedure provided in subsection (1). The revocation is final.

(8) If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, seriously mentally ill, or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board."

Section 46. Section 37-14-102, MCA, is amended to read:

**"37-14-102. Definitions.** In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of commerce.

(3) "License" means an authorization issued by the department to perform x-ray procedures on persons.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, osteopathy, or chiropractic.

(5) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

(6) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

(7) "Permit" means an authorization which may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(8) "Radiologic technologist" means a person other than a licensed practitioner who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and

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who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be utilized in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment."

Section 47. Section 37-14-301, MCA, is amended to read:

**"37-14-301. Limitation of license authority — exemptions.** (1) No person may perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry, provided such person is certified by the board of dentistry as having passed an examination testing his proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must

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be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection."

Section 48. Section 37-25-102, MCA, is amended to read:

**"37-25-102. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accredited" means accredited through the council on postsecondary accreditation and the U.S. department of education.

(2) "Board" means the board of medical examiners.

(3) "Commission" means the commission on dietetic registration, which is a member of the national commission for health certifying agencies.

*(4)* "Dietetic-nutrition practice" or "dietetics-nutrition" is the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, and food management and from the behavioral and social sciences to achieve and maintain health. The primary function of dietetic-nutrition practice is to provide nutrition assessment and nutrition counseling.

*(5)* "General nutritional information" means information on:

(a) principles of good nutrition;

(b) foods to be included in a daily diet;

(c) the essential nutrients needed by the body;

(d) recommended amounts of these nutrients;

(e) the action of these nutrients on the body;

(f) the effects of deficiencies in these nutrients; or

(g) foods and supplements that are good sources of essential nutrients.

*(6)* "Licensed nutritionist" means a nutritionist licensed under this chapter.

*(7)* "Nutrition assessment" means the evaluation of nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data in order to determine nutrient needs and to recommend appropriate nutritional intake, including both enteral and parenteral nutrition.

*(8)* "Nutrition counseling" means providing assistance and advice to individuals or groups in the selection of food and other sources of nutrients to achieve appropriate nutritional intake, based on:

(a) the nutrition assessment;

(b) the composition of food and other sources of nutrients; and

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(c) meal preparation consistent with cultural background and socioeconomic status.

*(9)* "Nutritionist" means:

(a) a person licensed under this chapter; or

(b) a person who has satisfactorily completed a baccalaureate and master's or a doctoral degree in the field of dietetics, food and nutrition, or public health nutrition conferred by an accredited college or university."

Section 49. Section 37-29-306, MCA, is amended to read:

**"37-29-306. Licensing.** (1) After March 1, 1985, a denturist license is valid for a period of 1 year. A renewal license must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours of continuing education, which may include programs sponsored by an educational institution, state denturist *licensing* board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in 37-29-305(3). Requests for approval of continuing education programs must be made to the board, providing sufficient outline of the program on which the board may base its determination. Hours pertain to clock hours actually attended by the licensee. In addition, the denturist shall submit proof that he holds a current cardiopulmonary resuscitation card. A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued. The license shall bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentations necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under this chapter."

Section 50. Section 37-60-101, MCA, is amended to read:

**"37-60-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose

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duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrolmen and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce provided for in 2-15-1801.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory thereof.

(11) "Licensee" means a person licensed under this chapter.

(12) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(13) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

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(14) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

(15) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(16) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(17) "Resident *manager*" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(18) "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(19) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(20) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(21) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, who does not wear or carry a firearm in the performance of those duties."

Section 51. Section 37-60-308, MCA, is amended to read:

**"37-60-308. Temporary employment without identification card — authority of board.** The board may, under such conditions as it shall prescribe by rule, authorize the employment by any licensee of any person for not more than 30 days who, because of his failure to obtain an identification card, could otherwise not act as a private security guard or private investigator."

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Section 52. Section 37-66-105, MCA, is amended to read:

**"37-66-105. Exemptions.** (1) None of the provisions of this chapter prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this chapter apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and *professional* land surveyors licensed to practice their respective professions.

(4) None of the provisions of this chapter shall apply to any person performing any of the services mentioned in this chapter upon his own property.

(5) None of the provisions of this chapter shall require the hiring of a landscape architect."

Section 53. Section 37-66-308, MCA, is amended to read:

**"37-66-308. Display of license — seal of landscape architect.** (1) Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and such other words or figures as the board considers necessary. All drawings and title pages of specifications prepared by such landscape architect or under the supervision of such landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed *professional* land surveyor."

Section 54. Section 37-72-101, MCA, is amended to read:

**"37-72-101. Construction blasting restrictions — license required — definitions — exemptions.** (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the workers' compensation division.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

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(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "division" means the workers' compensation division of the department of labor and industry provided for in 2-15-1702;

(d) "explosive" has the meaning given in *61-1-506.*

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

Section 55. Section 39-51-1219, MCA, is amended to read:

**"39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit.** (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever such portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable

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to the transferred portion of the business *bear* to the payroll of the predecessor in the last four completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(3) (a) The 90-day period may be extended at the discretion of the department.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, *the* ownership, *or* both the management and ownership are *not* substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer shall be based on estimates of the applicable payrolls.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year."

Section 56. Section 39-51-3206, MCA, is amended to read:

**"39-51-3206. Collection of benefit overpayments.** A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. The sum is collectible in the manner provided in this chapter for the collection of past-due contributions unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience. An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under *the laws of* this state or another state or under an unemployment benefit program of the United States."

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Section 57. Section 39-71-2501, MCA, is amended to read:

**"39-71-2501. (Temporary) Definitions.** As used in this part, the following definitions apply:

*(1)* "Department" means the department of labor and industry provided for in 2-15-1701.

*(2)* "Employer" has the meaning set forth in 39-71-117.

*(3)* "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

*(4)* "State fund" means the state compensation insurance fund referred to in 39-71-2301.

*(5)* "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

*(6)* "Tax account" means the workers' compensation tax account created by 39-71-2504. **(Terminates June 30, 1991—sec. 10, Ch. 664, L. 1987.)"**

Section 58. Section 41-5-808, MCA, is amended to read:

**"41-5-808. Regional detention facility.** (1) A regional detention facility may be established and maintained through cooperation or by cooperative agreement of more than one county or city.

(2) Each regional detention facility must be licensed by the department of *family services.*

(3) The county determined by the court as the residence of the youth is responsible for the cost of the detention of the youth, including medical expenses incurred during detention.

(4) Counties receiving detention services must be billed monthly for services provided during the preceding month and may be refused services if bills are not paid within 60 days of receipt of a statement."

Section 59. Section 46-18-235, MCA, is amended to read:

**"46-18-235. Disposition of money collected as fines and costs.** The money collected by a court, except money collected by a justice's court, as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held, except that:

(1) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the department of commerce for deposit into the state general fund to the extent the expenses were paid by the state;

(2) if the fine was imposed for a violation of Title 45, chapter 9, the court may order the money paid into the drug forfeiture *account* maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose; and

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(3) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected, except for fines collected by a justice court and distributed pursuant to 3-10-601, must be deposited in the state special revenue fund for use of the department of family services in the battered spouses and domestic violence grant program created by 40-2-401."

Section 60. Section 50-60-102, MCA, is amended to read:

"**50-60-102. Applicability.** (1) The state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; or

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act.

(2) The state may not enforce the state building code under 50-60-205 for the buildings *referred to in subsection (1).* Local governments that have made the state building codes applicable to the aforementioned buildings may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable."

Section 61. Section 52-1-103, MCA, is amended to read:

"**52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;

(3) provide the following functions, as necessary, for youth in need of care:

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(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(4) administer youth correctional facilities;

(5) provide supervision, care, and control of youth released from a state youth correctional facility;

(6) license youth care facilities, child placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for *severely* disabled persons, and adult foster care facilities;

(7) administer interstate compacts for children and delinquent youth;

(8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

(9) (a) make a written evaluation of each plan developed by the local youth services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;

(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local youth services advisory councils;

(10) administer services to the aged;

(11) provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

(12) utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;

(13) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

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(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;

(14) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(15) propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;

(16) contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

(17) adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529, and this chapter."

Section 62. Section 53-2-303, MCA, is amended to read:

**"53-2-303. County attorney and clerk — ex officio duties.** The county attorney shall be, ex officio, the legal adviser to the county welfare board and shall render such legal services as the county *or* department *of family services* may require. The county clerk and recorder shall be, ex officio, the secretary and clerk of the county welfare board."

Section 63. Section 53-5-513, MCA, is amended to read:

**"53-5-513. Confidentiality.** (1) The case records of the *departments* of social and rehabilitation services and *family services, their* local affiliate, the county welfare department, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 53-5-511 shall be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who has in his care an older person who he reasonably believes was abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person who is the subject of the report is not disclosed to the researcher; and

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(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(3) The records and reports required to be kept confidential by subsection (1) shall be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, neglected, or exploited an older person is the holder of a license, permit, or certificate issued by the department of commerce or any other entity of state government under the provisions of Title 37, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 64. Section 53-5-702, MCA, is amended to read:

"**53-5-702. Definitions.** In this part, the following definitions apply:

(1) "Department" means the department of *family* services.

(2) "Older Montanan" means a resident of this state who is at least 60 years of age."

Section 65. Section 53-5-803, MCA, is amended to read:

"**53-5-803. Office of legal and long-term care ombudsman services.** Contingent on receipt of federal funds for the purpose, there is an office of legal and long-term care ombudsman services in the department of *family* services. As required by the Older Americans Act of 1965, as amended (42 U.S.C. 3001, et seq.), and the regulations adopted pursuant thereto, the office:

(1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside in a safe environment; and

(2) coordinates legal services for the elderly."

Section 66. Section 60-11-1103, MCA, is amended to read:

"**60-11-1103. Railroad rehabilitation revenue bonds.** (1) The department is authorized to issue and sell railroad rehabilitation revenue bonds under the provisions of this part. The department of administration shall assist the department in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues

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or assets of the department acquired or held in connection with rehabilitation projects."

Section 67. Section 60-11-1203, MCA, is amended to read:

**"60-11-1203. Railroad rolling stock revenue bonds.** (1) The department is authorized to issue and sell railroad rolling stock revenue bonds under the provisions of this part. The department of administration shall assist the department in the issuance and sale of the bonds.

(2) The bonds do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the department acquired or held in connection with rolling stock projects."

Section 68. Section 61-5-214, MCA, is amended to read:

**"61-5-214. Mandatory suspension for failure to appear or pay fine.** The department shall suspend the license or driving privilege of an operator immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the operator:

(1) is guilty of a violation of 61-5-302 through 61-5-306, 61-5-309, or chapters 3, 7, 8, 9, or 10 of this title or is guilty of a criminal offense and was driving or was in actual physical control of a motor vehicle when the offense occurred; and

(2) (a) failed to post the set bond amount or appear as ordered by the court or appear upon issued summons; or

(b) failed to forfeit the posted bond amount or, when assessed a fine, costs, or restitution of $100 or more, failed to pay such fine, costs or restitution; and

(3) received notice, evidenced by a signed receipt for a certified letter or by a statement signed before the court of the provisions of this section, including the reinstatement fee."

Section 69. Section 61-5-216, MCA, is amended to read:

**"61-5-216. Reinstatement of license.** Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and the reinstatement fee, the department shall immediately reinstate the license, unless the operator otherwise is not entitled to reinstatement."

Section 70. Section 61-7-109, MCA, is amended to read:

**"61-7-109. Written reports of accidents — additional information — form of report.** (1) The operator of any motor vehicle which is in any manner involved in an accident within this state in which any person is killed or injured or in which damage to the property of any one person in excess of $400 is sustained shall, within 10 days after such accident, report the matter in writing to the department unless the accident was investigated and reported by a law enforcement officer as provided in subsection (3).

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(2) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident in which any person is killed or injured or in which damage to the property of any person exceeds $400, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the department.

(4) The form of the accident report required under this section shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in *chapter 6 of this title.*"

Section 71. Section 61-9-512, MCA, is amended to read:

**"61-9-512. Violation of rules — penalty.** (1) Any violation of any rules adopted by the department is a misdemeanor.

(2) A person convicted of *a violation of* any standard adopted pursuant to 44-1-1005 shall be fined not less than $25 or more than $500 for the first offense and not less than $25 or more than $1,000 for each subsequent offense.

(3) The penalties provided in subsection (2) apply to any motor carrier that is a corporation subject to the standards adopted pursuant to 44-1-1005. The penalties may be imposed against:

(a) a director or officer of the corporation;

(b) any receiver, trustee, lessee, agent, or person acting for or employed by the corporation; or

(c) any broker of property or officer, agent, or employee thereof."

Section 72. Section 69-14-708, MCA, is amended to read:

**"69-14-708. Records of accidents involving animals.** (1) It shall be the duty of any corporation, association, company, or person owning, controlling, or operating any railroad or branch thereof in this state to designate some station on the line of the same, in each county through which it passes, at which it shall keep a suitable book and within 30 days after the killing or injuring of any animal, to cause to be entered therein the date when and the place where the same was killed or injured, as near as may be, together with a description thereof, including the age, color, and sex of the same and marks and brands upon the same as near as the same can be done. When such railroad or branch thereof shall run to or through any town or station at which is located the county seat of any county, then such book shall be kept at such town or station at which said county seat is located, and the *written demand* provided for *in 69-14-709* may be served on the agent of such station.

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(2) This book shall be kept for the inspection of any person claiming to be interested in the inspection thereof.

(3) Notice of the station designated pursuant to subsection (1) shall be filed with the county clerk of the county in which said station is situated.

(4) Any corporation, association, or person so owning, controlling, or operating such railroad or branch thereof failing to designate said station, file said notice, keep said book, and make the entries as provided in this section shall be liable to the owner of the animal so killed or injured, whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof may in its discretion render verdict and judgment for the amount of the value of any such animal so killed or the amount of damages sustained by reason of any injury thereto."

Section 73. Section 70-22-103, MCA, is amended to read:

**"70-22-103. Definitions.** Except where the context indicates a different meaning, terms used in this part shall be defined as follows:

(1) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.

(2) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more of the property corners of the property in question.

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private ɾerson from the United States government.

(4) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under Title 37, chapter 67, and has a paid-up license for that calendar year or who is authorized under Title 37, chapter 67, to practice land surveying.

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(9) The "board" is the board of professional engineers and *professional* land surveyors, provided for in 2-15-1873."

Section 74. Section 71-3-206, MCA, is amended to read:

**"71-3-206. Fees.** (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien must be established and deposited in accordance with the provisions of 30-9-403*(13)*.

(2) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them."

Section 75. Section 75-10-627, MCA, is amended to read:

**"75-10-627. Benefit of state.** The agreement made pursuant to *75-10-626* is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries."

Section 76. Section 80-7-814, MCA, is amended to read:

**"80-7-814. Administration and expenditure of funds.** (1) Money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $2,500,000, except as provided by 80-7-815 in case of a noxious weed emergency. Once this amount is accumulated, any interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section, so long as the principal of the trust fund remains at least $2,500,000.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than $100,000 for first class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. Such expenditures must be on a cost-share basis with such organizations.

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

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(d) costs of collecting the surcharge imposed by 80-7-812, not to exceed 3% of the total surcharge proceeds;

(e) administrative expenses incurred by the noxious weed management advisory council; and

(f) any project recommended by the noxious weed management advisory *council*, if the department determines the project will significantly contribute to the management of noxious weeds within the state.

(4) In making such expenditures, the department must give preference to weed control districts and community groups.

(5) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 77. Section 81-9-228, MCA, is amended to read:

**"81-9-228. Inspection stamps.** (1) The board shall provide meat inspection stamps to all official establishments, which must contain the words "Montana Inspected and Passed". The inspection stamps must be designed by the board so as to be not in conflict with inspection stamps of the U.S. department of agriculture.

(2) Approved official establishments may use symbols of the inspection stamps on the processed meats and meat food products they *offer* for sale if they are in compliance with the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(3) The meat inspection stamps must at all times be under the jurisdiction of the chief."

Section 78. Section 82-11-123, MCA, is amended to read:

**"82-11-123. Requirements for oil and gas operations.** Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures, to facilitate the discovery of potential geothermal energy sources, reports on well locations, and the filing of directional surveys, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells and class II injection wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas *strata*, blowouts, *cave-ins*, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects

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from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

(5) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well;

(6) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof;

(7) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities thereof, which records shall be available for examination by the board or its employees at all reasonable times, and that that person file with the board such reports as it may prescribe with respect to quantities, transportations, and storages of the oil or gas or water; and

(8) the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells."

Section 79. Section 85-7-1612, MCA, is amended to read:

**"85-7-1612. Board of control — powers and duties.** (1) The board of control established by this part is the operating agent of the contracting districts for the operation and maintenance of irrigation and/or drainage works and the delivery of water therefrom.

(2) The board shall make and execute all necessary contracts; employ and appoint such agents, officers, and employees as may be required; and prescribe their duties.

(3) The board may institute and maintain any and all actions and proceedings and suits at law or in equity, necessary or proper in order to fully carry out the provisions of this chapter or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this part or acquired in pursuance thereof. In all courts, suits, or proceedings, the board may sue, appear, and defend in person or by its attorneys and in the name of such board of control.

(4) The board may adopt rules and bylaws governing the calling and holding of meetings of the board; the manner of transacting business thereat; and the publishing or posting of the orders, resolutions, and proceedings of the board. The board shall pass or adopt bylaws and rules for the apportionment and distribution of water to the lands of the contracting districts and for the protection and preservation of the works and other property of the districts. All orders and resolutions shall be passed or adopted by a majority of the members of the board of control by a "yea" and "nay" vote, to be entered upon the records of the board.

(5) The board of control may perform all other acts necessary or appropriate to fully carry out the purposes of this part.

(6) The board of control may plan, acquire, construct, operate, maintain, lease, *or* finance an undertaking through the issuance of revenue bonds, as provided in part 14 of this chapter."

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Section 80. Section 87-2-106, MCA, is amended to read:

**"87-2-106. Application for license.** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the department. Except as provided in subsections (2) through (4), the statements made by the applicant shall be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(4), the applicant must apply to the director and must submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(4). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, *or* fishing license for his spouse, parent, child, brother, or sister who is otherwise qualified to obtain such *license.*

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor."

Section 81. Section 90-3-101, MCA, is amended to read:

**"90-3-101. Purpose.** It is the purpose of this chapter to strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities."

Section 82. Section 90-8-102, MCA, is amended to read:

**"90-8-102. Declaration of policy.** (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

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(b) involuntary unemployment, with its resulting burden of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by making tax credits available to taxpayers investing in Montana capital companies;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program which gives priority to investments in capital companies in the order in which they are qualified will encourage prompt private investment in Montana businesses.

(4) The legislature further finds that use of money from the Montana in-state investment fund established by *17-6-306* to purchase debentures issued by a capital company will promote the business prosperity and economic welfare of the state and its citizens."

Section 83. **Code commissioner instruction.** The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 51st legislature.

Section 84. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 14, 1989.

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# CHAPTER NO. 84

[SB 14]

AN ACT ALLOWING LOCAL GOVERNMENTS TO FIX A TAX LEVY PRIOR TO THE SECOND MONDAY IN AUGUST; REVISING THE SCHEDULE FOR THE ADOPTION OF A FINAL BUDGET BY A COUNTY COMMISSION OR CITY COUNCIL; AMENDING SECTIONS 7-6-2316, 7-6-2317, 7-6-2321, 7-6-4227, 7-6-4228, AND 7-6-4232, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-2316, MCA, is amended to read:

**"7-6-2316. Notice of hearing on county proposed budget.** (1) The board of county commissioners shall then have a notice published stating that:

(a) the board has completed its county proposed budget for the current fiscal year;

(b) the budget is open to inspection in the office of the county clerk and recorder;

(c) the board will meet to fix the final budget and make appropriations, stating the *date,* time, and place of the meeting; and

(d) any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The notice shall be published two times, once each week, in a newspaper of general circulation in the county."

Section 2. Section 7-6-2317, MCA, is amended to read:

**"7-6-2317. Hearing on county proposed budget.** (1) *At least 3 days prior to the adoption of the final budget,* the county commissioners shall meet at the time and place designated in the notice provided for in 7-6-2316, at which time any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The hearing shall be continued from day to day and shall be concluded and the budget approved and adopted on *or before* the second Monday in August, before the fixing of the tax levies by the board."

Section 3. Section 7-6-2321, MCA, is amended to read:

**"7-6-2321. Fixing of tax levy.** (1) On *or before* the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy

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shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy.

(2) The tax levy shall be made in the manner provided by 15-10-201."

Section 4. Section 7-6-4227, MCA, is amended to read:

**"7-6-4227. Notice of hearing on preliminary budget.** (1) The council shall then cause a notice to be published stating that:

(a) the council has completed its preliminary municipal budget for the current fiscal year;

(b) the budget has been placed on file and is open to inspection in the office of the clerk of the municipality;

(c) the council will meet for the purpose of fixing the final budget and making appropriations, designating the *date,* time, and place when and where such meeting will be held; and

(d) any taxpayer or resident may appear at the meeting and be heard for or against any part of the budget.

(2) The notice shall be published at least one time in the official newspaper of the municipality or, if there is none, then in a newspaper of general circulation in the county in which the municipality is situated."

Section 5. Section 7-6-4228, MCA, is amended to read:

**"7-6-4228. Hearing on preliminary budget.** (1) *At least 3 days prior to the adoption of the final budget,* the council shall meet at the time and place designated in the notice provided in 7-6-4227, at which time any taxpayer or resident may appear and be heard for or against any part of the budget. The council may call in the official in charge of an office, department, service, or institution, at the time the estimates for their respective offices are under consideration, for examination concerning the estimates. The official shall be called in by the council, upon the request of a taxpayer or resident, for questioning upon the estimates either by the council, taxpayer, or resident.

(2) The hearing shall be continued from day to day and shall be concluded and the budget finally approved and adopted on *or before* the second Monday in August, prior to the fixing of the tax levies by the council."

Section 6. Section 7-6-4232, MCA, is amended to read:

**"7-6-4232. Fixing of tax levy.** (1) On *or before* the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis,

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without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy shall be made in the manner provided by 15-10-201."

Section 7. **Effective date.** [This act] is effective July 1, 1989.

Approved March 14, 1989.

## CHAPTER NO. 85

[SB 23]

AN ACT TO ADMIT THE VIDEOTAPED TESTIMONY OF A SEX CRIME VICTIM INTO EVIDENCE FOR PROSECUTION OF OTHER OFFENSES ARISING FROM THE SAME TRANSACTION; AND AMENDING SECTION 46-15-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-15-401, MCA, is amended to read:

**"46-15-401. When videotaped testimony admissible.** For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-507 *and for the prosecution of any offense arising from the same transaction, as defined in 46-11-501,* the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence."

Approved March 14, 1989.

## CHAPTER NO. 86

[SB 75]

AN ACT PROVIDING FOR AN AUDIT OF THE STATE EMPLOYEE GROUP BENEFIT PLANS EVERY 2 YEARS TO COVER THE 2-YEAR PERIOD SINCE THE LAST AUDIT; AMENDING SECTION 2-18-816, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-816, MCA, is amended to read:

**"2-18-816. Biennial audit of group benefit plans required.** The state employee group benefit plans established under this part, whether

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established on a self-funded basis or not, *must be* audited *every 2 years. The audit must cover the 2-year period since the last audit and be conducted by or at the direction of* the legislative auditor."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 14, 1989.

# CHAPTER NO. 87

[SB 110]

AN ACT TO ELIMINATE THE REQUIREMENTS FOR AN AUTHORIZATION SIGNATURE AND SUPPORTING DOCUMENTATION FOR CLAIMS SUBMITTED TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 17-8-201 AND 17-8-202, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-8-201, MCA, is amended to read:

**"17-8-201. Authorizations for disbursements — submission of claim to department of administration.** (1) All authorizations for disbursements shall be given by the agency concerned, and a record shall be kept by the agency of all the authorizations and expenditures. Claims for any disbursement must be submitted to the department of administration.

(2) The department may prescribe the claim form and may establish, in writing, rules governing the preparation, submittal, and processing of claims. All claims shall be processed in the order of their presentation, and all claims disapproved by the department shall be returned to the operating agency with an explanation in writing of why the claim was disapproved."

Section 2. Section 17-8-202, MCA, is amended to read:

**"17-8-202. Preaudit and transmittal of claims.** (1) The department of administration is not required to preaudit a liquidated claim against the state. However, the department of administration may preaudit those claims it considers necessary. The agency shall retain the original of all documents *that support claims* sent to the department. These documents are subject to postaudit by the legislative auditor.

(2) The department may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a claim, the department shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislature."

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Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to claims submitted electronically to the department of administration on or after January 1, 1989.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 14, 1989.

## CHAPTER NO. 88

[SB 151]

AN ACT REVISING THE LAWS RELATING TO THE PRACTICE OF COSMETOLOGY; EXPANDING THE MEMBERSHIP OF THE BOARD OF COSMETOLOGISTS; REGULATING THE PRACTICE OF BOOTH RENTAL; PROVIDING THAT LICENSING EXAMINATIONS BE ADMINISTERED BY THE BOARD OF COSMETOLOGISTS; AND AMENDING SECTIONS 2-15-1857, 37-31-101, 37-31-203, 37-31-301 THROUGH 37-31-303, 37-31-308, AND 37-31-312, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1857, MCA, is amended to read:

**"2-15-1857. Board of cosmetologists.** (1) There is a board of cosmetologists.

(2) *(a)* The board consists of *seven members and may include:*

*(i)* three licensed cosmetologists*;*

*(ii) one licensed manicurist or licensed electrologist;*

*(iii) two persons who are members of or affiliated with a school of cosmetology;* and

*(iv)* one public member who is not engaged in the practice of cosmetology, electrology, *or manicuring.*

*(b) Members are* appointed by the governor with the consent of the senate.

*(3)* Each licensed member appointed shall have actively engaged in the profession of cosmetology, *manicuring, or electrology* for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least 18 years old and a graduate of a high school or its equivalent. No *more than* two members of the board may be members of or affiliated with a school of cosmetology.

*(4)* Each member shall serve for a term of 4 years.

*(5)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

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Section 2. Section 37-31-101, MCA, is amended to read:

**"37-31-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Practice and teaching of cosmetology" includes work generally and usually included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in so-called hairdressing and beauty shops, *booths*, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as such store or place of business.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists provided for in 2-15-1857.

*(4) "Booth" means any part of a cosmetological establishment or manicuring shop that is rented or leased for the performance of cosmetologist services, as specified in 39-51-204(1)(l).*

*(5)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

*(6)* "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

*(7)* "Manicuring shop" means premises, a building, or part of a building in which the art of manicuring is practiced."

Section 3. Section 37-31-203, MCA, is amended to read:

**"37-31-203. Rulemaking powers.** The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice cosmetology or manicuring or to teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology and schools of manicuring for apprentices and students;

*(6) the qualification and registration of applicants for booth rental licenses; and*

*(7)* generally the conduct of the persons, firms, or corporations affected by this chapter."

Section 4. Section 37-31-301, MCA, is amended to read:

**"37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it shall be unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology or school of manicuring;

(c) manage or operate a cosmetology shop, manicuring shop, *booth,* or beauty parlor;

(d) teach in a school of cosmetology or school of manicuring;

(e) practice manicuring for compensation;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for any person who owns, manages, or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist or manicurist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed establishment as provided in this chapter, except when a licensed operator is requested by a customer to go to a place other than a licensed establishment and is sent to such customer from a licensed establishment;

(d) for any person who owns, manages, or controls a manicuring shop to employ or use an unlicensed person as a manicurist;

(e) to operate a manicuring school without complying with 37-31-311;

(f) to violate any of the provisions of this chapter."

Section 5. Section 37-31-302, MCA, is amended to read:

**"37-31-302. License required to practice, teach, or operate shop, booth, or school.** (1) No person may practice or teach cosmetology or practice or teach manicuring without a license.

(2) No place may be used or maintained for the teaching of cosmetology or manicuring for compensation except under a certificate of registration.

(3) No person may operate or manage a beauty shop or a manicuring shop or practice cosmetology or manicuring without a manager-operator license.

(4) No person may operate or conduct a school of cosmetology or a school of manicuring and teach the art of cosmetology or manicuring without a license to teach cosmetology.

*(5) No person may manage or operate a booth without a booth rental license.*

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*(6)* A person, firm, partnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

*(7)* No license may be issued until the inspection fees required in 37-31-312 have been paid."

Section 6. Section 37-31-303, MCA, is amended to read:

**"37-31-303. Application for license to practice or teach.** An applicant for a license to practice or teach cosmetology or for a license to practice manicuring must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board. The license must be renewed annually under 37-31-322."

Section 7. Section 37-31-308, MCA, is amended to read:

**"37-31-308. Examination — reexamination — exemption for handicapped persons.** (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology shall be held at places and times specified by the board. The examinations shall be *supervised* by the *board.* The examinations may not be confined to a specific method or system. *The examinations shall be conducted by persons who hold a current license to practice in the profession for which the applicant is being examined.*

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring must meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology must wait 1 year before reapplying to take the examination. Upon reapplying, the applicant must provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of social and rehabilitation services shall, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required training in a beauty school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

Section 8. Section 37-31-312, MCA, is amended to read:

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"**37-31-312. Inspection.** (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor, manicuring shop, *booth,* school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment or manicuring shop must pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological establishment or manicuring shop, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment or manicuring shop to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board shall conduct an annual inspection of each cosmetological establishment and manicuring shop in the state."

Section 9. **Booth rental license.** No person may receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

Section 10. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 11. **Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 37, chapter 31, part 3, and the provisions of Title 37, chapter 31, part 3, apply to [section 9].

Approved March 14, 1987.

# CHAPTER NO. 89

[SB 174]

AN ACT MAKING ANY MEMBER OF THE BOARD OF LANDSCAPE ARCHITECTS ELIGIBLE FOR THE CHAIRMANSHIP; AND AMENDING SECTION 37-66-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-66-201, MCA, is amended to read:

"**37-66-201. Organization — compensation.** (1) At its first meeting of every calendar year, the board shall elect from among its members

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a chairman, who may appoint a secretary. The secretary may or may not be a member of the board.

(2) The members of the board are entitled to receive compensation and travel expenses as provided in 37-1-133."

Approved March 14, 1989.

# CHAPTER NO. 90

[HB 175]

AN ACT AUTHORIZING THE DEPOSIT OF LOCAL GOVERNMENT TIME AND REPURCHASE DEPOSITS IN ANY BANK, SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION IN THE STATE; PROVIDING FOR THE SOLICITATION OF BIDS FOR SUCH DEPOSITS; ALLOWING A LOCAL BANK, SAVINGS AND LOAN ASSOCIATION, OR CREDIT UNION TO MATCH AN INTEREST RATE FROM AN INSTITUTION NOT LOCATED IN THE CITY, TOWN, OR COUNTY; AND AMENDING SECTIONS 7-6-201 AND 7-6-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-201, MCA, is amended to read:

**"7-6-201. Deposit of public funds in financial institutions.** (1) Except as provided in 7-6-202, 7-6-206, or 7-6-2701, it shall be the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control in any solvent banks, building and loan associations, savings and loan associations, or credit unions located in the county, city, or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other.

(2) Said local governing body is hereby authorized to deposit such public money not necessary for immediate use by such county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, or credit union authorized above or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from such bank, building and loan association, savings and loan association, or credit union such security as the local governing body may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits.

(4) All such deposits shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time. No deposit of funds shall be made or permitted to remain in any bank, building and loan association, savings and loan association, or credit union until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer or town clerk."

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Section 2. Section 7-6-206, MCA, is amended to read:

**"7-6-206. Time deposits — repurchase agreement.** (1) *Public* money not necessary for immediate use by *a* county, city, or town which is not invested in direct obligations of the United States government as authorized in 7-6-202 may be placed in time or savings deposits with any bank, savings and loan association, or credit union in the *state* or placed in repurchase agreements as authorized in 7-6-213. *Money* placed in repurchase agreements is subject to *subsection* (2).

(2) *The* local governing body may solicit bids *for time or savings deposits* from any bank, savings and loan association, or credit union in *the state. The* local governing body may deposit public money in such institutions unless *a* local financial institution agrees to pay the same rate of interest bid by *a* financial *institution not located in the county, city, or town.* The governing body may solicit bids by notice sent by mail to the investment institutions *who have requested that their* names *be* listed *for bid notice with the department of administration.*"

Approved March 14, 1989.

# CHAPTER NO. 91

[SB 251]

AN ACT REVISING THE LAW RELATING TO THE CONDUCT OF RAFFLES; INCREASING THE VALUE OF A RAFFLE PRIZE; EXEMPTING NONPROFIT VETERANS' GROUPS FROM PAYING A LICENSE FEE OR AN INVESTIGATIVE FEE TO CONDUCT A RAFFLE; AND AMENDING SECTION 23-5-413, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-413, MCA, is amended to read:

**"23-5-413. Raffle prizes restricted — exemption.** (1) Raffle prizes must be in tangible personal property only and not in money, cash, stocks, bonds, evidences of indebtedness, or other intangible personal property and *may* not exceed the value of *$5,000* for each individual raffle card. It shall be unlawful to, in any manner, combine any awards so as to increase the ultimate value of *the* award.

(2) (a) The restrictions of subsection (1) do not apply to a raffle conducted by a nonprofit corporation, religious corporation sole, or other nonprofit organization when the corporation or organization is licensed by the board of county commissioners to conduct the raffle. A separate license shall be required for each raffle conducted. *The board of county commissioners may not charge a license fee or an investigative fee for a raffle conducted by a nonprofit veterans' organization.*

(b) The organization or corporation seeking the license under subsection (2)(a) must apply to the board of county commissioners for the license and must provide the following information:

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(i) the cost and number of raffle tickets to be sold;

(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and

(iii) the proposed prizes and their value.

*(c) A veterans' organization seeking exemption from the license fee or an investigative fee shall present evidence of the organization's nonprofit status to the board of county commissioners.*

*(d)* The proceeds from the sale of the raffle tickets are to be used only for charitable purposes or to pay for prizes. The raffle prize must be in tangible personal property only and not in money, cash, stock, bonds, evidence of indebtedness, or other intangible personal property. None of the proceeds may be used for the administrative cost of conducting the raffle.

*(e)* The corporation or organization conducting the raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle. The person or persons submitting the application to the board of county commissioners along with the corporation or organization conducting the raffle shall be responsible for submitting the accounting to the board of county commissioners."

Approved March 14, 1989.

# CHAPTER NO. 92

[HB 459]

AN ACT TO AUTHORIZE THE USE OF JURIES CONSISTING OF 12 PERSONS OR LESS IN FELONY CRIMINAL ACTIONS UPON AGREEMENT OF THE PARTIES WITH THE COURT'S APPROVAL; AND AMENDING SECTIONS 3-15-106 AND 46-16-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-15-106, MCA, is amended to read:

**"3-15-106. Number of a trial jury.** (1) A trial jury consists of 12 persons or, *with the approval of the court, it may consist of* any number less than 12 upon which the parties agree in open court.

(2) In all civil actions where the relief asked for in the complaint is under the sum of $10,000, a trial jury may, in the discretion of the trial judge, consist of six persons and two-thirds of the jury may render a verdict."

Section 2. Section 46-16-301, MCA, is amended to read:

**"46-16-301. Formation of trial jury.** (1) Trial juries for criminal actions are formed in the same manner as trial juries in civil actions,

except that the total number of jurors drawn shall be at least *the number of jurors needed* plus the total number of peremptory challenges.

(2) The qualifications of jurors and excuses from jury duty are prescribed in Title 3, chapter 15, part 3."

Approved March 14, 1989.

# CHAPTER NO. 93

[HB 581]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO METAL MINE RECLAMATION; AND AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-331, 82-4-335, 82-4-361, AND 82-4-362, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates rulemaking authority to the board of land commissioners. Under the provisions of this bill, the board of land commissioners shall adopt rules to implement and administer a procedure for waiver of a minor violation from the civil penalty provisions provided in [section 5].

It is the intent of the legislature that the waiver be allowed only if a violation does not represent potential harm to the public health, public safety, or the environment and does not otherwise impair administration of the provisions of Title 84, chapter 4, part 3.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4-303, MCA, is amended to read:

**"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and

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economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(10) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

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(11) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) *an operation* resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

(12) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(13) "Underground mining" means all methods of mining other than surface mining.

(14) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(15) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

**"82-4-305. Exemption — small miners — written agreement.** (1) *The* provisions of this part *do not* apply to any small miner *if* the small miner:

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*(a)* annually agrees in writing *that*:

*(i)* he *will* not pollute or contaminate any stream; *and*

*(ii)* he *will* provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

*(b) provides* a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) For small-miner exemptions obtained after September 30, 1985, *a* small miner may *not* obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

*(3) The exemption provided in this section does not apply to a person whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described under [section 7].*"

Section 3. Section 82-4-331, MCA, is amended to read:

"**82-4-331. Exploration license required — employees included — limitation.** (1) *A* person *may not* engage in exploration in the state without first obtaining an exploration license from the board. *A* license *must* be issued for a period of 1 year from date of issue and *is* renewable

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from year to year on application. *An application for renewal must be* filed within 30 days preceding the expiration of the current license and *be accompanied by* payment of *a* fee as required for a new license. *A license may not be renewed if* the applicant for renewal is in violation of any provision of this *part. A* license *is* subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part *are* included in and covered by *the* license.

*(3) A person may not be issued an exploration license if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in [section 7].*"

Section 4. Section 82-4-335, MCA, is amended to read:

"**82-4-335. Operating permit — limitation.** (1) *A* person *may not* engage in mining, ore processing, or reprocessing of tailings or waste material or construct or operate a hard-rock mill or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board to do so. A separate operating permit *is* required for each complex. Prior to receiving an operating permit from the board, *a* person *shall* pay the basic permit fee of $25 and *shall* submit an application on a form provided by the board, which *must* contain the following information and any other pertinent data required by *rule*:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that such structures are safe and stable;

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(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(2) Except as provided in subsection (4), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 *must* be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(3) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(4) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

*(5) A person may not be issued an operating permit if that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond unless that person meets the conditions described in [section 7].*"

Section 5. Section 82-4-361, MCA, is amended to read:

"**82-4-361. Violation — penalties — waiver.** (1) A person who violates any of the provisions of this part, *the* rules or orders adopted under this part *(*except 82-4-339*)*, or *the* conditions of a small-miner exemption shall pay a civil penalty of not less than $100 or more than $1,000 for the violations and an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues

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and may be enjoined from continuing such violations as provided in this section. These penalties *are* recoverable in any action brought in the name of the state of Montana by the attorney general in the district court of the first judicial district of this state in and for the county of Lewis and Clark or in the district court having jurisdiction of the defendant.

(2) The attorney general shall, upon the request of the department, sue for the recovery of the penalties provided for in this section and bring an action for a restraining order *or a* temporary or permanent injunction against an operator or other person violating or threatening to violate an order adopted under this part.

*(3) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection."*

Section 6. Section 82-4-362, MCA, is amended to read:

**"82-4-362. Suspension of permits — hearing.** (1) If any of the requirements of this part, the rules *adopted under this part,* or the reclamation plan have not been complied with within the time limits set by the department or board or by this part, the department shall serve a notice of noncompliance on the licensee or permittee or, *if* necessary, the commissioner shall order the suspension of the permit. The notice or order *must* be handed to the licensee or permittee in person or served by certified or registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance *must* specify in what respects the operator has failed to comply with this part, the rules *adopted under this part,* or the reclamation plan.

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the board and the performance bond forfeited to the department. *The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.*

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."

Section 7. **Activity prohibited if bond forfeited — exception.** (1) Except as provided in subsection (2), a person may not conduct mining or exploration activities in this state if that person or any firm or business

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association of which that person was a principal or controlling member had a bond forfeited under this part.

(2) A person described in subsection (1) may apply for an operations permit or an exploration license or may conclude a written agreement under 82-4-305 if that person first pays to the department:

(a) the full amount of the necessary expenses incurred by the board under 82-4-341(5) for reclamation of the area for which the bond was forfeited;

(b) the full amount of any penalties assessed under this part; and

(c) interest on these amounts and penalties incurred at the rate of 6% per year.

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 7].

Approved March 14, 1989.

## CHAPTER NO. 94

[HB 226]

AN ACT TRANSFERRING FROM THE BOARD OF INVESTMENTS TO THE COAL TAX OVERSIGHT SUBCOMMITTEE THE DUTY TO PREPARE A REPORT ON POTENTIAL USES OF THE COAL TAX TRUST FUND; AMENDING SECTIONS 5-18-203 AND 17-6-322, MCA; REPEALING SECTION 17-6-323, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-6-322, MCA, is amended to read:

"**17-6-322. Report.** *The board shall include in its annual report a section on the results of the previous year's operations of the in-state investment fund, including:*

*(1)* financial statements audited by independent auditors;

*(2) a summary report of loan activity; and*

*(3) a comparison of the Montana in-state investment fund's performance in relation to the purposes contained in 17-6-303.*"

Section 2. Section 5-18-203, MCA, is amended to read:

"**5-18-203. Powers and duties of subcommittee.** (1) The coal tax oversight subcommittee may:

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(a) review the programs financed by coal severance tax funds; and

(b) consider any matters relating to coal taxation.

(2) The subcommittee shall:

*(a)* report and make recommendations to the revenue oversight committee*; and*

*(b) prepare for each regular session of the legislature a report on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.*"

Section 3. **Repeal.** Section 17-6-323, MCA, is repealed.

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved March 15, 1989.

# CHAPTER NO. 95

[SB 11]

AN ACT TO GENERALLY REVISE THE FORMAT FOR SESSION LAWS; PROVIDING FOR THE ASSIGNMENT OF CHAPTER NUMBERS TO ALL BILLS OTHER THAN RESOLUTIONS; REQUIRING DELETED CODE MATERIAL TO BE SHOWN AS STRICKEN; REQUIRING PREPARATION OF A SEPARATE INDEX FOR APPROPRIATION BILLS; AND AMENDING SECTIONS 5-11-204 THROUGH 5-11-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-11-204, MCA, is amended to read:

"**5-11-204. Secretary of state to assign chapter numbers to new laws.** It shall be the duty of the secretary of state, when bills passed by any legislature of Montana are filed in his office as directed in 5-4-302 and 5-4-305, to note thereon the date of filing and to number such bills, except resolutions, in the order of their reception by him, chapter 1 and upwards, using Arabic numerals."

Section 2. Section 5-11-205, MCA, is amended to read:

"**5-11-205. Publication of laws — format.** (1) The legislative council shall publish all laws and resolutions passed or adopted by each session of the legislature in a publication to be known as the "Laws of Montana".

(2) Laws of each session must be printed in the Laws of Montana in the order that they have been filed in the office of the secretary of state

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with the chapter number assigned by the secretary of state as the heading. The chapter number must also appear as part of each page heading. In all laws containing amendments to an existing law, the new parts designated in the act by underlining must be printed in italics in the Laws of Montana *and deleted provisions must be shown as stricken.* The senate or house bill number may be omitted from each act.

(3) Reference to the laws of a legislative session may be made as follows: "Chapter .... (giving number), Laws of .... (giving the year enacted)".

*(4)* Resolutions adopted by each session of the legislature must be printed in a separate section of the Laws of Montana with the type of resolution and its number as a heading.

*(5)* The legislative council shall also publish in the Laws of Montana the indexes required by 5-11-206."

Section 3. Section 5-11-206, MCA, is amended to read:

**"5-11-206. Index — list.** (1) The legislative council shall prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislature. The index shall be a thorough index of the laws and resolutions and of each subject contained in or covered by the laws and resolutions, together with a cross-index to assist in readily finding any subject contained in each volume. *A separate index must be prepared for appropriation bills passed by each session of the legislature.*

(2) For the purpose of uniformity in indexes, the index of each succeeding publication of the session laws shall conform as nearly as practicable with those of the volumes preceding it.

(3) There shall also be prepared for each publication of the session laws a "code sections affected list" showing what sections of the Montana Code Annotated have been amended or repealed by any laws enacted by that session of the legislature."

Approved March 15, 1989.

# CHAPTER NO. 96

[SB 12]

AN ACT EXTENDING THE JURISDICTION OF THE MONTANA MEDICAL LEGAL PANEL TO CLAIMS AGAINST PHYSICIANS AND DENTISTS EMPLOYED BY A UNIVERSITY OR COLLEGE INFIRMARY; AMENDING SECTION 27-6-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-6-103, MCA, is amended to read:

**"27-6-103. Definitions.** As used in this chapter, the following definitions apply:

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(1) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of dentistry; or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

(2) "Health care facility" means a facility (other than a governmental infirmary *but including a university or college infirmary*) licensed as a health care facility under Title 50, chapter 5.

(3) "Health care provider" means a physician, a dentist, or a health care facility.

(4) "Hospital" means a hospital as defined in 50-5-101.

(5) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(6) "Panel" means the Montana medical legal panel provided for in 27-6-104.

(7) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

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(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 2. **Applicability.** [This act] applies to malpractice claims occurring on or after [the effective date of this act].

Approved March 15, 1989.

# CHAPTER NO. 97

[SB 26]

AN ACT PROVIDING FOR APPROVAL OF PHYSICIAN ASSISTANTS-CERTIFIED; REGULATING THE PRACTICE OF PHYSICIAN ASSISTANTS-CERTIFIED, INCLUDING PRESCRIBING AND DISPENSING AUTHORITY, BILLING PROCEDURES, AND LOCUM TENENS PRACTICE; AMENDING SECTIONS 33-22-111, 37-3-103, 37-7-401, 37-20-101 THROUGH 37-20-104, 37-20-202, 37-20-301 THROUGH 37-20-303, AND 53-6-101, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 and 13] grant or extend rulemaking authority to the board of medical examiners in order to implement the provisions of this bill.

At a minimum, it is intended that the rules address the following topics:

(1) authorization for prescribing, dispensing, and administering drugs by a physician assistant-certified, including the extent and limitations of the prescribing and dispensing authority, required recordkeeping, and refilling of prescriptions; and

(2) considerations pertinent to approval of locum tenens utilization plans.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1841.

(2) "Locum tenens" means the temporary provision of services within the scope of practice of a physician assistant-certified.

(3) "Physician assistant-certified" means a member of a health care team, approved by the board, who provides medical services that may include examination, diagnosis, prescription of medications, and treatment, as approved by the board, under the supervision of a physician licensed by the board.

(4) "Protocol" means the proper relationship between a physician assistant-certified and other health care practitioners and the manner of their interaction.

Section 2. **Qualifications for physician assistant-certified.** A person may not be approved as a physician assistant-certified in this state unless he:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program approved by the American medical association's committee on allied health education and accreditation;

(3) has taken and successfully passed an examination recognized by the national commission on the certification of physician assistants;

(4) holds a current certificate from the national commission on the certification of physician assistants; and

(5) has submitted to the board detailed information on his history, education, and experience.

Section 3. **Physician assistant-certified as agent of supervising physician.** (1) In establishing protocol, a physician assistant-certified must be considered the agent of the supervising physician with regard to all duties delegated to the physician assistant-certified under the utilization plan. A health care provider shall consider the instructions of a physician assistant-certified as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant-certified under the utilization plan.

(2) The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis.

(3) Nothing in this chapter may be construed to conflict with the provisions of 37-3-322.

Section 4. **Prescribing and dispensing authority — discretion of supervising physician on limitation of authority.** (1) A physician assistant-certified may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician in his discretion may impose additional limitations on the prescribing and dispensing authority granted by the board.

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(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant-certified may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232, is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 48 hours.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant-certified shall maintain registration with the federal drug enforcement administration.

(e) Drugs dispensed by a physician assistant-certified must be prepackaged by a licensed pharmacist, except that samples provided by a pharmaceutical company representative may be dispensed.

(f) Prescriptions written by physician assistants-certified must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

(g) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified.

Section 5. **Billing.** A supervising physician or an institution where services were delivered may bill for physician assistant-certified services.

Section 6. **Liaison to the board.** The Montana academy of physician assistants shall elect one person to serve as a nonvoting liaison to the board to represent the interests of physician assistants.

Section 7. **Coverage required for services provided by physician assistants-certified.** An insurer, health service corporation, or any employee health and welfare fund that provides accident or health insurance benefits to residents of this state shall provide, in group and individual insurance contracts, coverage for health services provided by a physician assistant-certified, as normally covered by contracts for services supplied by a physician, if health care services that the physician assistant-certified is approved to perform are covered by the contract.

Section 8. Section 37-3-103, MCA, is amended to read:

**"37-3-103. Exemptions from licensing requirements.** (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a *physician assistant-certified* in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law; and

(o) the execution of a death sentence pursuant to 46-19-103.

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves

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to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 9. Section 37-20-101, MCA, is amended to read:

**"37-20-101. Qualifications of supervising physician and physician assistant-certified.** (1) Each supervising physician named in the utilization plan required by 37-20-301 shall:

(a) possess a current, unrestricted license to practice medicine in this state;

(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the *physician assistant-certified* to be employed is of good character and is both mentally and physically able to perform the duties of a *physician assistant-certified* described in the utilization plan;

(c) submit a statement to the board that he will exercise supervision over the *physician assistant-certified* in accordance with any rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; and

(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.

(2) *Each physician assistant-certified* named in the utilization plan required by 37-20-301 shall *meet the criteria for approval as a physician assistant-certified as provided in [section 2].*"

Section 10. Section 37-20-102, MCA, is amended to read:

**"37-20-102. Insurance requirement.** *A physician assistant-certified* may *not* perform any service unless he has insurance from liability for his errors, omissions, or actions to the limits required by the hospital's governing authority."

Section 11. Section 37-20-103, MCA, is amended to read:

**"37-20-103. Limitations on authority conferred — exception.** Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a *physician assistant-certified* to perform those functions and duties specifically delegated by law to persons licensed as optometrists as defined under Title 37, chapter 10."

Section 12. Section 37-20-104, MCA, is amended to read:

**"37-20-104. Penalty — enforcement.** (1) Any person who employs a *physician assistant-certified* or holds himself out to be a *physician*

*assistant-certified* without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) In addition to seeking any criminal penalty available under this section, the board may withdraw its approval of any utilization plan previously approved which is applicable to any supervising physician or *physician assistant-certified* who:

(a) acts in violation of this section;

(b) obtained the approval of the board by fraud;

(c) acts in a manner contrary to the terms of the utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted thereunder.

(3) The board may enforce the provisions of this section by the remedy of injunction."

Section 13. Section 37-20-202, MCA, is amended to read:

**"37-20-202. Adoption of rules.** The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one *physician assistant-certified* unless he can demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of *physician assistant-certified* utilization plans *and locum tenens utilization plans,* and the health care needs of the public."

Section 14. Section 37-20-301, MCA, is amended to read:

**"37-20-301. Utilization plan required — contents — approval.** (1) *A* physician, office, firm, state institution, or professional service corporation may *not* employ or make use of the services of a *physician assistant-certified* in the practice of medicine, as defined in 37-3-102, and *a physician assistant-certified* may *not* be employed *or practice* as a *physician assistant-certified* unless the *physician assistant-certified:*

*(a)* is supervised by a licensed physician;

*(b)* has been approved by the Montana state board of medical examiners; *and*

*(c) has received board approval of a physician assistant-certified* utilization plan.

(2) A *physician assistant-certified* utilization plan must set forth in detail the following information:

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(a) the name and qualifications of the supervising physician and the *name and approval number of the physician assistant-certified*, as provided in 37-20-101;

(b) the nature and location of the physician's medical practice;

(c) the duties to be delegated to the *physician assistant-certified* and the location in which those duties are to be performed;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to serve in the place of the supervising physician in the event that the supervising physician is unable to supervise the *physician assistant-certified* temporarily;

(e) necessary *guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and*

*(f) other information the board may consider necessary.*

(3) The board shall approve the utilization plan if it finds that the duties to be delegated to the *physician assistant-certified* are:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the *physician assistant-certified.*

*(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in [section 2], as long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.*

*(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice for a period not to exceed 30 calendar days. A locum tenens utilization plan may be approved by a single board member.*"

Section 15. Section 37-20-302, MCA, is amended to read:

"**37-20-302. Utilization plan approval fee — renewal of approval — renewal fee.** (1) Every physician, office, firm, or professional service corporation proposing to employ a *physician assistant-certified* shall pay to the board a utilization plan approval fee in an amount set by the board, not exceeding $50. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) Approval of every *physician assistant-certified* utilization plan expires 1 year from the date of approval and is invalid thereafter. The department of commerce shall notify each physician, office, firm, or professional corporation and *physician assistant-certified* named in a utilization plan of the date of expiration of board approval at least 1 month prior to the expiration of approval.

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(3) Renewal of approval shall be granted by the board under such circumstances as would justify original approval of a utilization plan and upon payment by the employing physician, office, firm, or professional service corporation of a renewal fee in an amount to be set by the board, not to exceed $50.

*(4) Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified on a locum tenens basis shall pay to the board a locum tenens utilization plan fee in an amount set by the board, not to exceed $50.*

*(5)* Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 16. Section 37-20-303, MCA, is amended to read:

**"37-20-303. Exemptions from approval requirement.** This chapter does not require the approval of a *physician assistant-certified* utilization plan *or locum tenens utilization plan* with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17, 31, or 32."

Section 17. Section 37-7-401, MCA, is amended to read:

**"37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions.** (1) It shall be unlawful for any physician *or physician assistant-certified* to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of such patients.

(2) A prescription must be so written that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 3 years from the date it was originally filled. No narcotic prescription may be refilled."

Section 18. Section 33-22-111, MCA, is amended to read:

**"33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies of disability insurance, including individual, group, and blanket policies, and all policies insuring the payment of compensation under the Workers' Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, *physician assistant-certified,* dentist, osteopath, chiropractor, optometrist, chiropodist, psychologist, licensed social worker, licensed professional counselor, or nurse specialist as

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specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

(2) Nothing in this section shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1); nor shall this section be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 19. Section 53-6-101, MCA, is amended to read:

**"53-6-101. Definition of medical assistance.** (1) The definition of medical assistance shall include:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing home services;

(e) physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere;

(f) services provided by nurse specialists, as specifically listed in 37-8-202(5), within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider; *and*

*(g) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider.*

(2) It may also include, although not necessarily limited to, the following:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy and other related services;

(f) clinic services;

(g) services provided by social workers licensed under Title 37, chapter 22;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

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(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) any additional medical service or aid allowable under or provided by the federal Social Security Act."

Section 20. **Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 20, and the provisions of Title 37, chapter 20, apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 7].

Section 21. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 22. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 23. **Effective dates.** (1) [Sections 3, 4, 6, and 13 and this section] are effective on passage and approval.

(2) [Sections 1, 2, 5, 7 through 12, and 14 through 22] are effective October 1, 1989.

Approved March 15, 1989.

# CHAPTER NO. 98

[SB 31]

AN ACT MODELED ON THEFT LAW IN SECTION 45-6-301(7), MCA, AND ALLOWING THE AMOUNTS INVOLVED IN A SERIES OF RELATED CRIMINAL MISCHIEFS TO BE ADDED TOGETHER SO AS TO IMPOSE A HIGHER PENALTY; AND AMENDING SECTION 45-6-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-6-101, MCA, is amended to read:

**"45-6-101. Criminal mischief.** (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

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(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $300, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

*(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss."*

Approved March 15, 1989.

# CHAPTER NO. 99

[SB 36]

AN ACT ESTABLISHING THE INSURANCE DEPARTMENT AS A CRIMINAL JUSTICE AGENCY; AMENDING SECTION 33-1-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-1-311, MCA, is amended to read:

**"33-1-311. General powers and duties.** (1) The commissioner shall enforce the provisions of this code and shall execute the duties imposed upon him by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code.

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(3) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.

(4) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

*(5) The department is a criminal justice agency as defined in 44-5-103.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 15, 1989.

## CHAPTER NO. 100

[SB 37]

AN ACT INCREASING THE FEE CHARGED BY A COUNTY TREASURER FOR MAKING AND ACKNOWLEDGING A DEED FOR PROPERTY SOLD FOR DELINQUENT TAXES; AMENDING SECTION 7-6-2131, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-2131, MCA, is amended to read:

"**7-6-2131. Fees of county treasurer.** The county treasurer shall receive the sum of *$25 plus actual costs incurred* for making and acknowledging a deed for property sold for delinquent taxes."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved March 15, 1989.

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# CHAPTER NO. 101

[SB 41]

AN ACT TO GENERALLY REVISE THE PROCESSING OF PAYROLL WARRANTS; AUTHORIZING PAYMENT OF WARRANTS BY ELECTRONIC FUNDS TRANSFER; REDUCING THE LENGTH OF TIME FOR THE PRESENTMENT OF WARRANTS; EXTENDING THE DEADLINE BY WHICH THE STATE AUDITOR IS REQUIRED TO CLASSIFY A CANCELED WARRANT AS UNCLAIMED PROPERTY; AMENDING SECTIONS 2-18-405, 17-8-301, AND 17-8-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [this act], "electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape and that orders, instructs, or authorizes the state auditor to debit or credit an account.

Section 2. Section 2-18-405, MCA, is amended to read:

**"2-18-405. Payroll based on actual, end-of-period figures — pay date — change of payroll periods.** (1) By January 1, 1979, all state payroll systems shall be based upon actual payroll figures submitted after the end of the payroll period and may not be based upon estimated payroll.

(2) All state payroll systems shall provide for the fixing of payroll periods and designated days on which salaried employees shall be paid for the preceding payroll period. The pay date shall be uniform for all employees of each state agency employed in the same geographic area, and payroll warrants shall be distributed or mailed *and electronic funds transfers initiated* within 10 business days following the close of the payroll period.

(3) The payroll period of employees of a state agency may not be changed by inclusion of the agency into the state payroll system or by any revision or modification of the system unless notice of the proposed change has been given to each employee who will be affected by such change in the form and manner prescribed by the state auditor not less than 60 days prior to the effective date of the change."

Section 3. Section 17-8-301, MCA, is amended to read:

**"17-8-301. State moneys — how expended by treasurer.** Except as herein provided, no moneys received by the state treasurer *may* be paid out by him except upon state warrant issued by the state auditor *or on electronic funds transfer authorized by the state auditor. The* state auditor *may* not issue his warrant *or authorize an electronic funds transfer* upon the state treasurer except upon a claim duly approved by the department of administration in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and

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the provisions of this section *do* not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer."

Section 4. Section 17-8-303, MCA, is amended to read:

**"17-8-303. Warrants — presentation and cancellation.** (1) State warrants must be presented for payment within the time limits specified as follows:

(a) Except as provided in subsection (1)(b), all warrants drawn by the state auditor on the state treasury shall be presented for payment within *6 months* after the date of the issue thereof.

(b) Warrants issued for the department of social and rehabilitation services that are funded to any extent with federal money shall be presented for payment within 180 days after the date of issue.

(2) Should the payee or legal holder of any warrant fail to present it for payment within the time specified in subsection (1), the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to a separate agency fund account administered by the state auditor. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment within 4 years from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof.

(3) Three years *and 6 months* after cancellation, the warrant shall be classed as unclaimed property subject to the provisions of Title 70, chapter 9, parts 1 through 3. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment, such presentation shall be to the department of revenue as provided in 70-9-310."

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 17, chapter 8, part 3, and the provisions of Title 17, chapter 8, part 3, apply to [section 1].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 15, 1989.

## CHAPTER NO. 102

[SB 74]

AN ACT REQUIRING MANDATORY LICENSING OF ADULT FOSTER FAMILY CARE HOMES; PROVIDING FOR APPLICATION AND RECORDKEEPING REQUIREMENTS; ESTABLISHING PENALTIES; AMENDING SECTION 53-5-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **License required.** No person, group of persons, or corporation may establish or operate an adult foster family care home unless licensed by the department. No fee may be charged for the license.

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Section 2. **License application — investigation.** (1) Application for a license must be made to the department on forms prescribed by the department.

(2) Within 30 days of receipt of the application, the department shall investigate the following to determine whether a license should be issued:

(a) the character, suitability, and qualifications of the applicant and persons directly responsible for the care of residents;

(b) the programs and practices necessary to ensure the health, safety, and well-being of the residents; and

(c) the adequacy and safety of the applicant's physical facilities.

Section 3. **Inspections — records — reports.** Each applicant and licensee shall:

(1) give the right of entry to and allow the inspection of premises by representatives of the department;

(2) keep and maintain records as prescribed by the department and permit departmental inspection of these records; and

(3) report required facts on forms furnished by the department.

Section 4. **Penalty — remedies.** (1) A person, group of persons, or corporation that establishes or operates an adult foster family care home without first obtaining a license from the department as provided for in this part is guilty of a misdemeanor and, upon conviction, may be punished by a fine not to exceed $500.

(2) The department shall investigate if it is advised or has reason to believe that a person, group of persons, or corporation is operating an adult foster family care home without a license. If the department finds that the adult foster family care home is being or has been operated without a license, it may report the results of the investigation to the attorney general or to the county attorney of the county in which the home is being operated and may request that an injunction be issued against the operator until a license is obtained.

(3) The department may, through its attorney, any county attorney, or the attorney general, institute any action necessary to enforce compliance with this part.

Section 5. Section 53-5-303, MCA, is amended to read:

"**53-5-303. Purpose.** *(1)* In order to ensure the proper care of aged persons or disabled adults in foster family care homes and to implement provisions of Title XX of the Social Security Act, Public Law 93-647, the department may obtain, license, and supervise adult foster family care homes for four or fewer aged persons or disabled adults in need of such care.

*(2) Subsection (1) is not intended to apply to those persons who voluntarily live together in a private home and agree to share living expenses and responsibilities.*"

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Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 53, chapter 5, part 3, and the provisions of Title 53, chapter 5, part 3, apply to [sections 1 through 4].

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Approved March 15, 1989.

# CHAPTER NO. 103

[SB 89]

AN ACT TO REVISE FEES FOR TEACHER CERTIFICATION AND EMERGENCY AUTHORIZATION OF EMPLOYMENT; AMENDING SECTIONS 20-4-109 AND 20-4-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-4-109, MCA, is amended to read:

**"20-4-109. Fees for teacher and specialist certificates.** (1) Each person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed *$5* for each school fiscal year that the certificate will be valid. In addition to this fee, each person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of *$5*. Such fees shall be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer in the following manner:

(a) *$3* to the credit of the state special revenue fund created in subsection (2);

(b) $2 to the general fund.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the board of public education for expenses for the certification standards and practices advisory council created in 2-15-1522."

Section 2. Section 20-4-111, MCA, is amended to read:

**"20-4-111. Emergency authorization of employment.** (1) Any district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid teacher or specialist certificate as an instructor of pupils when such

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district cannot secure the services of a person holding a valid certificate. The person shall have previously held a valid teacher or specialist certificate or shall meet the standards of preparation prescribed by the policies of the board of public education for and during such emergency. Such emergency authorization of employment shall indicate:

(a) the district to which such authorization is issued;

(b) the person whom the district is authorized to employ;

(c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ such person is given; and

(d) the school fiscal year for which such emergency authorization of employment is given.

(2) Emergency authorization of employment of a person shall be valid for the school fiscal year identified on such authorization and may be renewed in accordance with the board of public education policies. A fee of *$5* and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for such person, a filing fee of *$5* shall be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved March 15, 1989.

# CHAPTER NO. 104

[SB 123]

AN ACT PROVIDING FOR CANCELLATION AND REISSUANCE OF A MOTOR VEHICLE CERTIFICATE OF OWNERSHIP CONTAINING AN ERROR CAUSED BY THE DEPARTMENT OF JUSTICE; CREATING A MISDEMEANOR OFFENSE FOR FAILING TO RETURN A CERTIFICATE FOLLOWING ACTUAL NOTICE OF THE DEPARTMENT'S DEMAND FOR THE RETURN; AND AMENDING SECTION 61-3-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-201, MCA, is amended to read:

**"61-3-201. Transfer of interest — cancellation of erroneous certificate of ownership.** (1) Upon a transfer of any interest in a motor

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vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for *the* vehicle in the appropriate space provided upon the reverse side of the certificate, and his signature *must* be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. *The department may not issue a* certificate of ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The *county treasurer shall collect the* penalty at the time of registration. *The penalty* is in addition to the fees otherwise provided by law. If the transferee *does* not *make* application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required for an original application for a certificate of ownership, together with a verified or certified statement of the transfer of such interest. The statement *must* set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting *the* transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases *must* be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days thereafter, shall issue a new certificate of ownership and certificate of registration to the *transferee.* The notice required *by this section* is complied with by deposit in the post office in Deer Lodge, Montana, *of the* notice, postage prepaid, addressed to the person at the respective address shown on its records.

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(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure *in subsection (3)* must be followed in applying for a new certificate of ownership and certificate of registration but the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

(5) (a) *If* the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered *under this chapter* and not exceeding a combined value of $15,000 *dies* without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless *the* property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary *under subsection (5)(a)* to entitle the affiant to a transfer.

(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a) of this section.

(6) Nothing in subsection (5) *prevents* any secured party from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of *the* assignment must be filed with the department and record *of the assignment* made upon its records.

(7) The *certificate* of ownership *is* valid until canceled by the department upon a transfer of any interest shown therein, and *annual renewal is not needed.*

*(8) (a) Upon its determination that a certificate of ownership contains an error caused by the department, the department may cancel the certificate of ownership and issue a replacement for the erroneous certificate if the owner has returned the certificate to be canceled.*

*(b) Any person who fails to return a certificate of ownership issued with an error caused by the department after receiving actual notice of the department's demand for the return of the certificate as required by subsection (8)(a) is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 15, 1989.

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# CHAPTER NO. 105

[SB 154]

AN ACT TO PROVIDE THAT THE DEPARTMENT OF STATE LANDS MAY KEEP CONFIDENTIAL CERTAIN GEOLOGIC INFORMATION RECEIVED FROM LESSEES.

STATEMENT OF INTENT

The legislature is extending the rulemaking authority of the board of land commissioners to allow the board to amend its existing mineral leasing rules to provide for protection of confidential information. The legislature intends that the rules be written broadly to cover all information that would legitimately be considered confidential by lessees, including, as appropriate, mineral quality and quantity, mineral location, mineral depth, cost of production, and the extent of the reserves. This information may include economic or engineering data. The legislature also intends that the rules establish a procedure whereby the lessee may notify the department of state lands of information it considers to be confidential and to be notified whether the department agrees before the lessee submits the information. Furthermore, the legislature intends that the rules include a process to protect the lessee's interests if the department considers declassification of the information at a future date.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Limitation on public inspection rights.** The department may withhold from public inspection any information obtained from a mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the mining lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

Section 2. **Limitation on public inspection rights.** The department may withhold from public inspection any information obtained from a lessee under this part if the information relates to the geology of the mining lease. The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

Section 3. **Limitation on public inspection rights.** The department may withhold from public inspection any information obtained from a coal mining lessee or permittee under this part if the information relates to the geology of the mining lease or permit. The withholding is effective for as long as the department considers it necessary either to protect the lessee's or permittee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

Section 4. **Limitation on public inspection rights.** The department may withhold from public inspection any information obtained from an oil

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or gas lessee under this part if the information, including drill logs, seismic data, and lithographic descriptions, relates to the geology of the oil or gas lease. The withholding is effective for as long as the department considers it necessary either to protect the lessee's economic interest in the geologic information against unwarranted injury or to protect the public's best interest.

Section 5. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 77, chapter 3, part 1, and the provisions of Title 77, chapter 3, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 77, chapter 3, part 2, and the provisions of Title 77, chapter 3, part 2, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 77, chapter 3, part 3, and the provisions of Title 77, chapter 3, part 3, apply to [section 3].

(4) [Section 4] is intended to be codified as an integral part of Title 77, chapter 3, part 4, and the provisions of Title 77, chapter 3, part 4, apply to [section 4].

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 15, 1989.

# CHAPTER NO. 106

[SB 170]

AN ACT ALLOWING A DESIGNATION OF DANGEROUS OR NONDANGEROUS OFFENDER TO BE MADE AT THE TIME OF REVOCATION OF A PROBATIONARY SENTENCE; AMENDING SECTION 46-18-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-18-404, MCA, is amended to read:

"**46-18-404. Designation as nondangerous offender for purposes of parole eligibility.** (1) *Except as provided in subsection (4), the* sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

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(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for *the* offense has been set aside in a postconviction hearing.

(3) If the court determines that an offender is a *dangerous* offender. it shall make that determination a part of the sentence imposed and shall state the determination in the judgment. *Except as provided in subsection (4), if* the sentence and judgment do not contain a determination *that the offender is a dangerous offender*, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

*(4) If an offender is given a probationary sentence that is subsequently revoked, the court may make the determination of whether the offender is a dangerous or nondangerous offender at the time of the revocation proceeding.*"

Section 2. **Retroactive applicability.** [This act] applies to revocation proceedings begun on or after [the effective date of this act]. To this extent, [this act] applies retroactively, within the meaning of 1-2-109.

Approved March 15, 1989.

# CHAPTER NO. 107

[SB 199]

AN ACT MAKING THE OFFICE OF THE SECURITIES COMMISSIONER A CRIMINAL JUSTICE AGENCY BY STATUTE; AMENDING SECTION 30-10-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-10-304, MCA, is amended to read:

"**30-10-304. Investigations and subpoenas.** (1) The commissioner in his discretion may:

(a) make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order hereunder or to aid in the enforcement of

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parts 1 through 3 of this chapter or in the prescribing of rules and forms hereunder;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order hereunder.

(2) (a) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(b) The commissioner may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Securities Act of Montana if the activities had occurred in this state.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no compelled testimony or evidence or any information directly or indirectly derived from such testimony or evidence may be used against the witness in any criminal case. Nothing in this section prohibits the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in his sole discretion, that the ends of justice would be served thereby. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

*(5) The office of the securities commissioner is a criminal justice agency as defined in 44-5-103."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 15, 1989.

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# CHAPTER NO. 108

[SB 231]

AN ACT AUTHORIZING THE RESALE OF CARCASSES PURCHASED AT AUCTION FROM THE STATE OF MONTANA IF THE CARCASSES ARE NOT INTENDED FOR HUMAN CONSUMPTION; AMENDING SECTION 87-1-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-512, MCA, is amended to read:

**"87-1-512. Certificate of sale.** *(1)* Upon the sale of property as provided in 87-1-511, the officer shall issue a certificate to the purchasing party, certifying that the purchaser has the legal right to be in possession of the property and that anyone so acquiring this property from the state is prohibited from reselling *the property* for *human consumption.*

*(2) Only* one carcass of either deer, moose, or elk may be purchased per person *at an auction conducted pursuant to 87-1-511.* At its discretion, the department may donate unsold carcasses to welfare departments, public institutions, or charitable institutions.

*(3) Subsection (1) does not prohibit the resale of heads, hides, pelts, or mounts."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 15, 1989.

# CHAPTER NO. 109

[SB 236]

AN ACT PROVIDING FOR BETTER ELK MANAGEMENT BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS BY REQUIRING THAT A PERSON ISSUED A SPECIAL ELK PERMIT FOR AN AREA WITH NO GENERAL ELK HUNTING NOTIFY THE DEPARTMENT WITHIN 10 DAYS OF A SUCCESSFUL ELK HUNT; PROVIDING FOR NOTIFICATION OF UNSUCCESSFUL HUNTS; PROVIDING FOR WITHHOLDING OF SPECIAL ELK PERMIT PRIVILEGE AS A PENALTY FOR FAILURE TO NOTIFY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] grants to the fish and game commission rulemaking authority to implement the provisions of this bill. At a minimum, the rules are intended to address:

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(1) information considered necessary to monitor elk kills and unsuccessful elk hunts in hunting districts where there is no general elk hunting;

(2) the form of the notification card required by [section 1]; and

(3) enforcement of the penalty provisions of [section 1(3)].

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Notification of results of elk hunt required — penalty.** (1) In order to enhance recordkeeping, the department shall issue with every special elk permit for a hunting district where there is no general elk hunting a card to be returned to the department by the licensee within 10 days of successfully killing an elk. The card must contain any information the commission by rule determines necessary to monitor elk kills during the season.

(2) If a permittee does not successfully kill an elk during the season, the card must be marked to indicate an unsuccessful hunt and returned to the department within 10 days of the end of the season.

(3) A permittee who fails to return the card as required by this section may not apply for a special elk permit to hunt elk during the next regular hunting season.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 2, and the provisions of Title 87, chapter 2, apply to [section 1].

Section 3. **Effective date — termination.** [This act] is effective on passage and approval and terminates January 1, 1991.

Approved March 15, 1989.

## CHAPTER NO. 110

[HB 80]

AN ACT AUTHORIZING DISCLOSURE OF CHILD ABUSE AND NEGLECT RECORDS TO YOUTH PROBATION OFFICERS; AMENDING SECTION 41-3-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person

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who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or his guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

*(j) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;*

*(k)* a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect; or

*(l)* a foster care review committee established under 41-3-1115.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

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(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 15, 1989.

# CHAPTER NO. 111

[SB 30]

AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO THE INTERNATIONAL FUEL TAX AGREEMENT FOR THE TAXATION OF MOTOR FUELS USED BY VEHICLES OPERATED ON AN INTERJURISDICTIONAL BASIS; AND AMENDING SECTIONS 15-70-104 AND 15-70-302, MCA.

STATEMENT OF INTENT

[Section 1] of the bill requires the department of revenue to adopt rules implementing the International Fuel Tax Agreement. The rules are intended to provide for the exchange of information with member states, the timely collection and distribution of motor fuel taxes, and the efficient administration and enforcement of the provisions contained in the agreement.

The legislature intends that the rules to be adopted by the department should, at a minimum, address the following:

(1) the issuance of licenses and decals to Montana-based interstate carriers;

(2) the necessary forms and required procedures for an interstate carrier to report mileage, fuel consumption, and taxes due;

(3) the timely collection and distribution of taxes to member states;

(4) auditing and monitoring procedures for the enforcement of the agreement; and

(5) definition of terms and establishment of administrative policies and procedures to adhere to the terms of the agreement.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **International Fuel Tax Agreement.** (1) The department of revenue may enter into the International Fuel Tax Agreement for audits, exchange of information, and collection and distribution of motor fuel taxes pertaining to users of motor fuel in fleets of motor vehicles operated or

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intended to operate across jurisdictional boundaries. The International Fuel Tax Agreement is not effective unless it is in writing and is signed by the department and the department has adopted rules implementing the agreement.

(2) The agreement may determine:

(a) the base jurisdiction for motor fuel users;

(b) motor fuel user records requirements;

(c) audit procedures;

(d) procedures for the exchange of information;

(e) persons eligible for tax licensing;

(f) the definition of qualified motor vehicles;

(g) bonding requirements;

(h) reporting requirements and periods;

(i) uniform penalty and interest rates for late reporting or payment of taxes;

(j) methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction; and

(k) other provisions to facilitate the administration of the agreement.

(3) The department may, as required by the terms of the agreement, forward to officers of another jurisdiction any information in its possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuel. The department may disclose to officers of another jurisdiction the location of offices, motor vehicles, and other real and personal property of users of motor fuel.

(4) The agreement may provide each jurisdiction authority to audit the records of persons based in the jurisdiction to determine if the motor fuel taxes due each jurisdiction are properly reported and paid. Each jurisdiction shall forward the findings of the audits performed on persons based in the jurisdiction to each jurisdiction in which the person has taxable use of motor fuel. For a person not based in Montana who has taxable use of motor fuel in Montana, the department may serve the audit findings received from another jurisdiction in the form of an assessment on the person, as though an audit was conducted by the department.

(5) The agreement entered into pursuant to this section does not preclude the department from auditing the records of any person covered by the provisions of this chapter.

(6) If the specific requirements of the agreement, as the agreement reads on the effective date of adoption by the department, differ from the general provisions of this chapter or other rules promulgated by the department, the rules implementing the cooperative agreement prevail.

(7) The legal remedies for a person served with an order or assessment under this section are as prescribed in this chapter.

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Section 2. **Definition.** (1) As used in [section 1], "motor fuel" means gasoline as defined in 15-70-201 and special fuel as defined in 15-70-301.

(2) As used in [sections 1 through 3], "agreement" means the International Fuel Tax Agreement provided for in [section 1].

Section 3. Section 15-70-104, MCA, is amended to read:

**"15-70-104. Rules to be established by department.** (1) The department of revenue shall have the power and it shall be its duty to adopt, publish, and enforce the rules consistent with and necessary for carrying out the provisions of this chapter.

(2) The department may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of:

*(a)* part 3; *and*

*(b) the International Fuel Tax Agreement authorized by [section 1].*"

Section 4. Section 15-70-302, MCA, is amended to read:

**"15-70-302. Special fuel dealer's licenses and special fuel user's permits required — exceptions.** (1) It *is* unlawful for *a* person to act as a special fuel dealer in this state unless *the* person is the holder of an uncanceled fuel dealer's license issued to him by the department.

(2) Every special fuel user shall obtain annually from the department, prior to the use of special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel user's permit and, except as provided in subsection (5), shall at all times display the original or a reproduced copy of the permit in each *special fuel* vehicle operated by him upon the highways. *The permit must* be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user *is* responsible for reproducing clear and legible copies of the permit.

(3) A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile provided the person purchases special fuel, tax paid, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

(4) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit *is* not transferable and *is* valid for 90 days. Permits will be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(5) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (2) if:

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*(a) he is registered and licensed pursuant to the International Fuel Tax Agreement as authorized by [section 1] and the vehicle displays a license or decal issued pursuant to the agreement; or*

*(b)* the motor vehicle operated by him is a vehicle that is part of a motor vehicle fleet based in Montana that is proportionally registered under the provisions of 61-3-711 through 61-3-733;

*(c)* he obtains a registration card issued by the department of highways indicating the special fuel user's permit number; and

*(d)* the registration card indicating the special fuel user's permit number is carried in the vehicle and is available for inspection."

Section 5. **Collection of fuel tax.** The department of revenue and the department of highways may establish procedures under the International Fuel Tax Agreement to provide for the billing, collection, and administration of fuel taxes for those owners who proportionally register their fleet vehicles through the department of highways under 61-3-711 through 61-3-733.

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Codification instruction.** [Sections 1, 2, and 5] are intended to be codified as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, apply to [sections 1, 2, and 5].

Approved March 16, 1989.

# CHAPTER NO. 112

[SB 76]

AN ACT TO ADOPT A VARIABLE CONTRACT LAW AUTHORIZING LIFE INSURERS TO ESTABLISH SEPARATE ACCOUNTS TO PROVIDE FOR VARIABLE LIFE INSURANCE POLICIES AND VARIABLE ANNUITY CONTRACTS.

STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates rulemaking authority to the commissioner of insurance in [section 5].

Although 33-1-313 delegates to the commissioner of insurance rulemaking authority to effectuate any provisions of the code, this bill substantively increases this power, necessitating a statement of intent.

[Section 5] empowers the commissioner of insurance with the sole authority to regulate the issuance and sale of variable contracts and allows

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the commissioner to promulgate rules to carry out the provisions of this bill. The commissioner's authority to promulgate rules is limited in scope to the following areas:

(1) rules relating to maintaining reserves for guaranteed benefits and funds in a separate account;

(2) rules relating to valuation of assets allocated to a separate account;

(3) rules relating to the transfer of cash or securities among a life insurance company's accounts; and

(4) rules relating to the requirements of doing business under this bill.

All rules promulgated under this bill are subject to the provisions of the Montana Administrative Procedure Act.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 6] may be cited as the "Montana Variable Contract Law".

Section 2. **Separate accounts for life insurance or annuities.** (1) Subject to the provisions of subsection (2), a domestic life insurer may establish one or more separate accounts and may allocate to such accounts the amounts necessary to provide for life insurance or annuities and benefits incidental thereto, payable in fixed or variable amounts, or both. The amounts allocated to such accounts may include without limitation proceeds applied under optional modes of settlement or under dividend options.

(2) Separate accounts for life insurance or annuities established under the provisions of subsection (1) are subject to the following:

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account must be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(b) Except as provided for reserves for guaranteed benefits and funds in subsection (c):

(i) amounts allocated to a separate account and accumulations thereon may be invested and reinvested in any class of investment authorized under Title 33, chapter 2, part 8, if limitations under 33-2-806 on investments in stocks are not applicable;

(ii) the investments in the separate account or accounts may not be considered in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) Except with the approval of the commissioner and under conditions relating to investments and other matters as he prescribes that recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to amount and duration and for funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

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(d) Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation or, if there is no readily available market, as provided under the terms of the contract or the rules or other written agreement applicable to that separate account; however, unless otherwise approved by the commissioner, the portion, if any, of the assets of that separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (c) must be valued in accordance with the laws and rules otherwise applicable to the insurer's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by [sections 1 through 6] must be owned by the insurer, and the insurer may not be or hold itself out to be a trustee with respect to those amounts. If and to the extent provided under applicable contracts that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account are not chargeable with liabilities arising out of any other business the insurer may conduct.

(f) (i) No sale, exchange, or other transfer of assets may be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; or

(B) the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value and the transfer of securities is approved by the commissioner.

(ii) The commissioner may approve other transfers among these accounts if, in his opinion, transfers would not be inequitable.

(g) To the extent an insurer considers it necessary to comply with any applicable federal or state laws, the insurer, with respect to any separate account, including without limitation any separate account that is a management investment company or a unit investment trust account, may provide, for persons having an interest therein, appropriate voting and other rights and special procedures for the conduct of the business of that account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of that account.

Section 3. **Contract to contain statement of essential features.** A contract providing benefits payable in variable amounts delivered or issued for delivery in this state must contain a statement of the essential features of the procedures to be followed by the insurer in determining the dollar amount of the variable benefits. A contract under which the benefits vary to reflect investment experience, including a group contract and a certificate evidencing the variable benefits issued thereunder, must state that the dollar amount will vary and must contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

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Section 4. **Requirements for doing business.** (1) No insurer may deliver or issue for delivery within this state a variable contract unless the insurer is authorized to transact life insurance or annuity business in this state and the commissioner is satisfied that its condition or method of operation in connection with the issuance of variable contracts will not render its operation hazardous to the public or its policyholders in this state. In making such a determination, the commissioner must consider, among other things:

(a) the history and financial condition of the insurer;

(b) the character, responsibility, and fitness of the officers and directors of the insurer; and

(c) the laws and regulations under which the insurer is authorized in the state of domicile to issue variable contracts. For this purpose, the state of entry of an alien insurer is its place of domicile.

(2) The commissioner may consider an insurer to have met the provisions of this section if:

(a) the insurer is a subsidiary of an authorized life insurer or is affiliated with an authorized life insurer through common management or ownership; and

(b) either it, the parent, or the affiliated insurer meets the requirements of this section.

Section 5. **Powers of commissioner.** Except as provided in Title 30, chapter 10, parts 1 through 3, the commissioner has sole authority to regulate the issuance and sale of variable contracts and to adopt rules to carry out the purposes and provisions of [sections 1 through 6].

Section 6. **Variable contracts to meet insurance contract requirements.** (1) Except for 33-15-321 through 33-15-329, 33-20-302, and 33-20-307 for variable annuity contracts and 33-20-104, 33-20-111, 33-20-112, and 33-20-201 through 33-20-213 for variable life insurance policies and as otherwise provided in [sections 1 through 6], all pertinent provisions of Title 33 and other laws relating to insurance apply to separate accounts and their related policies and contracts.

(2) Any individual variable life insurance contract or any individual variable annuity contract delivered or issued for delivery in this state must contain grace and reinstatement provisions appropriate to the contract. Any individual variable life insurance contract must contain nonforfeiture provisions appropriate to such a contract.

(3) An insurer shall file with the commissioner a copy of a final prospectus, dated and effective, before it issues or delivers an individual variable life insurance contract or an individual variable annuity contract in this state.

(4) The reserve liability for any variable contract must be established in accordance with actuarial procedures that recognize the variable nature of benefits provided and mortality guarantees.

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Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [sections 1 through 6].

Section 9. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 16, 1989.

# CHAPTER NO. 113

[SB 125]

AN ACT PERMITTING VESTED MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM TO PURCHASE ADDITIONAL SERVICE FOR THE PURPOSE OF CALCULATING THEIR RETIREMENT ALLOWANCES; LIMITING THE TYPES OF SERVICE CREDITS THAT MEMBERS MAY PURCHASE; REVISING PROVISIONS REGARDING THE PURCHASE OF SERVICE CREDITS FOR SERVICE IN THE MILITARY, RED CROSS, OR MERCHANT MARINE; AMENDING SECTIONS 19-4-402 THROUGH 19-4-404, 19-4-408, 19-4-410, 19-4-411, 19-4-804, AND 19-4-902, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Election to purchase additional service.** (1) Except as provided in subsection (3), a member with 5 years or more of creditable service may make a written election with the retirement board to purchase, for the purpose of calculating his retirement allowance, 1 year of additional service for each 5 years of creditable service, up to a maximum of 5 years of additional service. A part-time member may purchase additional service on a prorated basis.

(2) (a) To purchase additional service under this section, a member must contribute, in a lump-sum payment or in installments as agreed upon by the member and the retirement board, an amount equal to:

(i) the combined employer and employee rate on July 1, 1989, or the combined rate in effect at the time he is eligible to purchase the service, whichever date is later, multiplied by his earned compensation as provided in subsection (2)(b); and

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(ii) interest at a rate of 8% compounded annually from July 1, 1989, or from the date at which he is eligible to purchase the service, whichever date is later.

(b) The earned compensation used in calculating the cost of purchasing additional service under this section is:

(i) for the first year of service purchased, the member's earned compensation for the 1988-89 school year or for his fifth year of service, whichever year is later;

(ii) for the second year of service purchased, the member's earned compensation for the 1988-89 school year or for his 10th year of service, whichever year is later;

(iii) for the third year of service purchased, the member's earned compensation for the 1988-89 school year or for his 15th year of service, whichever year is later;

(iv) for the fourth year of service purchased, the member's earned compensation for the 1988-89 school year or for his 20th year of service, whichever year is later; and

(v) for the fifth year of service purchased, the member's earned compensation for the 1988-89 school year or for his 25th year of service, whichever year is later.

(3) On or after July 1, 1989, a member eligible to purchase creditable service under 19-4-402, 19-4-403, 19-4-408, 19-4-410, or 19-4-411 may not purchase additional service under this section unless he elects in writing to:

(a) waive his eligibility to purchase creditable service under 19-4-402, 19-4-403, 19-4-408, 19-4-410, or 19-4-411; and

(b) apply the accumulated contributions made under 19-4-402, 19-4-403, 19-4-408, 19-4-410, or 19-4-411 to the cost of additional service purchased under this section.

(4) Additional service purchased under this section may not be used to qualify a member for service retirement.

Section 2. Section 19-4-402, MCA, is amended to read:

**"19-4-402. Creditable service for out-of-state employment.** A person applying for membership *before July 1, 1989,* may also apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if *the* service had been performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of

membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for *the* service. The contributions may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 3. Section 19-4-403, MCA, is amended to read:

**"19-4-403. Creditable service for employment while on leave.** A person applying for membership *before July 1, 1989,* may also apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon his completing 5 years of active membership in Montana subsequent to his return, if his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board in an amount not exceeding 2 years, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for *the* service. The contribution may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 4. Section 19-4-404, MCA, is amended to read:

**"19-4-404. Creditable service for active service in military, red cross, or merchant marine.** (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Vietnam conflict between August 5, 1964, and May 7, 1975, both dates inclusive, if he has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a completed application form and proper certification of his military service.

(2) *(a)* If a member is ineligible for service credit under subsection (1), he may apply under the provisions of this subsection for creditable service in the retirement system, *except as provided in subsection (2)(b),* for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or *the* merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for *the* service.

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*(b) If a member elects to purchase additional service under [section 1], service purchased under this subsection (2) may be used only for the purpose of calculating his retirement allowance and may not be considered creditable service for the purpose of determining eligibility under 19-4-801 or 19-4-802.*

*(3)* The contribution *required under subsection (2)* may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 5. Section 19-4-408, MCA, is amended to read:

**"19-4-408. Creditable service for employment in private schools.** A person applying for membership *before July 1, 1989,* may also apply for creditable service in the retirement system for employment service in a private elementary, secondary, or postsecondary educational institution. Employment service must be of an instructional nature or be employment as an administrative officer or a member of the scientific staff. Employment service does not include students employed by a private elementary, secondary, or postsecondary educational institution. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in the retirement system, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned after becoming a member of the retirement system or returning to the retirement system, whichever is later, for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contributions may be made in lump-sum payment or in installments as agreed between the person and the retirement board. The provisions of 19-4-405 apply to creditable service purchased under this section."

Section 6. Section 19-4-410, MCA, is amended to read:

**"19-4-410. Creditable service for extension service employment.** (1) At any time before retirement, a member with 5 years or more of creditable service in the retirement system may make a written election with the retirement board to qualify up to 5 years of his employment service with the Montana cooperative extension service, subject to the limitation contained in 19-4-405, if:

*(a) the member became a member of the retirement system before July 1, 1989;*

*(b)* the service involved instructional service at a unit of the Montana university system; and

*(c)* the member received a refund of his membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be qualified.

(2) To qualify service under this section, the member shall contribute to the retirement system an amount equal to the combined employer and

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employee contribution for his first full year's teaching salary earned after becoming a member of the retirement system for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service. The contribution rate must be that rate in effect at the time he is eligible for *the* service.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board."

Section 7. Section 19-4-411, MCA, is amended to read:

**"19-4-411. Absence due to employment-related injury.** (1) (a) Subject to the limitation in subsection (5), time during which a member is absent because of an injury related to employment covered by the retirement system that entitles him to workers' compensation payments may be qualified under the retirement system *if the member was a member of the retirement system before July 1, 1989.* To qualify this service, a member shall contribute to the retirement system, upon his return to contributing membership service, an amount equal to:

(i) the contributions which would have been made by him had he not been absent, based on his compensation at the commencement of his absence;

(ii) interest, which begins to accrue 1 year from the date he returns to covered employment; and

(iii) interest not paid by the employer under subsection (1)(b).

(b) Whenever a member elects to contribute under subsection (1)(a), the employer shall contribute an amount equal to the contributions which would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of his absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection (1)(a). If the employer elects not to pay the interest, this amount must be paid by the employee.

(2) A member shall file with the retirement board a written notice of his intent to pay the contributions under subsection (1)(a).

(3) Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered employment.

(4) A member absent as provided in subsection (1)(a) loses his right to contribute under this section if all of his accumulated normal contributions are refunded under 19-4-603.

(5) The maximum amount of membership service allowable under this section is 2 years."

Section 8. Section 19-4-804, MCA, is amended to read:

**"19-4-804. Allowance for superannuation retirement.** (1) Upon superannuation retirement, a member shall receive a retirement allowance

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consisting of a pension which, together with an annuity, provides a retirement allowance equal to one-sixtieth of his average final compensation multiplied by the *sum of the* number of years of creditable service, *service transferred under 19-4-409, and additional service purchased under [section 1].*

(2) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of his average final compensation plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board."

Section 9. Section 19-4-902, MCA, is amended to read:

**"19-4-902. Allowance for disability retirement.** (1) Upon retirement for disability, a member shall receive the superannuation allowance prescribed under part 8 of this chapter if he is eligible.

(2) If he is not eligible for the allowance prescribed under part 8 of this chapter, he shall receive a disability retirement allowance which consists of:

(a) an annuity which is the actuarial equivalent of his accumulated contributions at the time of retirement; and

(b) a pension which, together with his annuity, provides a total retirement allowance equal to one-sixtieth of his average final compensation multiplied by the *sum of the* number of years of his creditable service, *service transferred under 19-4-409, and additional service purchased under [section 1]*, if such retirement allowance exceeds one-fourth of his average final compensation; otherwise, a pension which, together with his annuity, provides a total retirement allowance equal to one-fourth of his average final compensation.

(3) No allowance under subsection (2) may exceed one-sixtieth of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement."

Section 10. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 11. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 4, part 4, and the provisions of Title 19, chapter 4, part 4, apply to [section 1].

Section 12. **Effective date.** [This act] is effective July 1, 1989.

Approved March 16, 1989.

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# CHAPTER NO. 114

[HB 341]

AN ACT AMENDING THE SMALL TRACT FINANCING ACT OF MONTANA BY AUTHORIZING THE USE OF TRUST INDENTURES IN TRANSACTIONS IN WHICH THE REAL PROPERTY DOES NOT EXCEED 30 ACRES; AND AMENDING SECTIONS 71-1-302 THROUGH 71-1-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-1-302, MCA, is amended to read:

**"71-1-302. Policy.** Because the financing of homes and business expansion is essential to the development of the state of Montana and because financing *of homes and business expansion*, usually involving areas of real estate of not more than *30* acres, has been restricted by the laws relating to mortgages of real property and because more financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than *30* acres as provided *in this part.*"

Section 2. Section 71-1-303, MCA, is amended to read:

**"71-1-303. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given or his successor in interest, and who shall not be the trustee.

(2) "*Thirty* acres" means *30* acres of land.

(3) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(4) "Trust indenture" means an indenture executed in conformity with this part and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(5) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture or his successor in interest."

Section 3. Section 71-1-304, MCA, is amended to read:

**"71-1-304. Trust indentures authorized — power of sale for breach in trustee.** (1) Transfers in trust of any interest in real property of an area not exceeding *30* acres may be made to secure the performance of an obligation of a grantor or any other person named in the indenture to a beneficiary provided that it *is* unlawful to substitute a trust indenture for any mortgage in existence on March 5, 1963.

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(2) Where any transfer in trust of any interest in real property is made to secure the performance of *the* obligation *referred to in subsection (1)*, a power of sale is conferred upon the trustee to be exercised after a breach of the obligation for which *the* transfer is security.

(3) A trust indenture executed in conformity with this part may be foreclosed by advertisement and sale in the manner provided *in this part* or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision in the trust indenture.

(4) Where the trust indenture states that the real property involved does not exceed *30* acres, *the* statement *is* binding upon all parties and conclusive as to compliance with the provisions of this part relative to the power to make a transfer, trust, and power of sale."

Approved March 16, 1989.

# CHAPTER NO. 115

[HB 421]

AN ACT PROVIDING A POSTRETIREMENT ADJUSTMENT FOR CERTAIN MEMBERS OF THE PUBLIC EMPLOYEES', TEACHERS', SHERIFFS', AND STATE GAME WARDENS' RETIREMENT SYSTEMS OR THEIR BENEFICIARIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a member or beneficiary is eligible to receive a postretirement adjustment as provided in [section 3] if he is receiving a:

(a) service retirement allowance and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or

(b) disability or survivorship allowance.

(2) A member or beneficiary is ineligible to receive a postretirement adjustment under subsection (1) unless he has been receiving a monthly service, disability, or survivorship allowance for at least 24 consecutive months on or before June 30 in the year the adjustment is made.

Section 2. **Funding for postretirement adjustment — reserve fund.** (1) At the end of each fiscal year, the board shall determine the total investment income earned on the retirement fund for that fiscal year. From this amount, the board shall subtract the:

(a) actuarial amount required to fund the retirement system for the fiscal year; and

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(b) retirement system's administrative and investment expenses for the fiscal year.

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the retirement fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible members or beneficiaries under [section 3].

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under [section 3], an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement allowance is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship allowance of all eligible members, when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency.

Section 3. **Payment and amount of postretirement adjustment.** (1) Effective January 1 of each year that funds are available under [section 2], a member or beneficiary eligible under [section 1] shall receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement allowance payable to an eligible member or beneficiary by:

(a) dividing the amount available under [section 2(3)] for payment of the postretirement allowance by the total accumulated years of service for all eligible members and beneficiaries;

(b) multiplying the quotient obtained in subsection (2)(a) by the member's total years of service;

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly annuity from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a member had elected to receive an optional retirement allowance, the amount of his postretirement allowance must be adjusted by the appropriate optional factor.

(4) If more than one beneficiary is receiving a member's retirement allowance, the postretirement adjustment must be divided in the same manner as the member's retirement allowance.

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Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 19, chapters 3, 4, 7, and 8, and the provisions of Title 19, chapters 3, 4, 7, and 8, apply to [sections 1 through 3].

Section 6. **Effective date.** [This act] is effective July 1, 1989.

Approved March 16, 1989.

# CHAPTER NO. 116

[HB 461]

AN ACT TO ENCOURAGE WATER USE EFFICIENCY PROJECTS OR PROGRAMS UNDER THE MONTANA WATER DEVELOPMENT PROGRAM; AND AMENDING SECTIONS 85-1-602 AND 85-1-604, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-1-602, MCA, is amended to read:

**"85-1-602. Objectives.** The department shall administer a water development program to accomplish such objectives as rehabilitation of state-owned water projects and works; promotion of private, local government, and state water development; development of water-based recreation and the protection of water resources for the benefit of agriculture, flood control, and other uses; development of offstream and tributary storage; *encouragement of projects or programs that improve water use efficiency, including development of new, efficient water systems and rehabilitation of older, less efficient water systems;* and development of state-tribal, state-federal, and state-tribal-federal water projects. The storage of water for existing and future beneficial uses shall be given the highest priority unless a water development project or activity designed to accomplish another objective is demonstrated to be more beneficial to a greater number of people. The water development program is the key implementation portion of the state water plan and shall be administered to accomplish the objectives of the plan."

Section 2. Section 85-1-604, MCA, is amended to read:

**"85-1-604. Water development state special revenue account created — revenues allocated — limitations on appropriations from account.** (1) There is created a water development state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the water development debt service fund pursuant to 85-1-603, there shall be paid into the water development state special revenue account:

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(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; and

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the water development state special revenue account for the following purposes and subject to the following conditions:

(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;

(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;

(iii) the development of the hydropower potential of state-owned dams;

(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;

(v) the promotion of the development of offstream and tributary storage;

(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;

*(vii) projects or programs that improve water use efficiency, including development of new, efficient water systems and rehabilitation of older, less efficient water systems;*

*(viii)* administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and

*(ix)* any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the sources provided for in (c) and (d) of subsection (2) and only that amount

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may be appropriated from the account for loans and grants for water development projects and activities; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 16, 1989.

# CHAPTER NO. 117

[HB 484]

AN ACT TO REQUIRE PERSONS WHO ANNUALLY USE 20 GALLONS OR MORE OF HALOGENATED SOLVENTS FOR COMMERCIAL PURPOSES AND GOVERNMENT USES TO REGISTER WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AND TO PROHIBIT THE SALE OF 20 GALLONS OR MORE OF HALOGENATED SOLVENTS FOR COMMERCIAL OR GOVERNMENT USE TO PERSONS NOT POSSESSING PROOF OF RECISTRATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Halogenated solvents — sale restricted — proof of registration required — procedure.** (1) It is unlawful for any person to distribute, sell, or offer for sale within the state quantities of 20 gallons or more of halogenated solvent annually to a single purchaser for commercial or government use unless the purchaser possesses proof of registration with the department.

(2) It is unlawful for any person to annually use 20 gallons or more of a halogenated solvent for commercial purposes without registering with the department.

(3) Under this section, halogenated solvents include but are not limited to solvents containing tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, and other hazardous wastes referenced in 40 CFR 261.31, United States environmental protection agency hazardous waste numbers F001 and F002, as amended.

(4) To register with the department, a person or government unit shall file a statement indicating the following:

(a) the person's or government unit's name and business address;

(b) the estimated volume of halogenated solvent used annually for commercial or government purposes; and

(c) the method of waste disposal in accordance with requirements specified by department rules, including:

(i) treatment or disposal in an on-site facility;

(ii) delivery to an appropriate off-site storage, treatment, or disposal facility;

(iii) beneficial use or reuse; or

(iv) legitimate recycling or reclamation.

(5) Pursuant to the requirements of subsection (4), the department shall:

(a) notify affected persons and government units of the requirements;

(b) prepare and distribute forms for the statement;

(c) prepare and distribute information to assist persons and government units in selecting appropriate methods to use, dispose of, or reuse waste halogenated solvents; and

(d) register any person or government unit who files a completed statement.

(6) This section does not authorize the department to impose new or additional requirements for waste disposal on commercial or government users of halogenated solvents.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 1].

Approved March 16, 1989.

# CHAPTER NO. 118

[SB 120]

AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO RELEASE TO THE DEPARTMENT OF REVENUE, FOR A CHILD SUPPORT ENFORCEMENT ACTION, INFORMATION FROM THE BIRTH RECORDS OF A PERSON BORN OUT OF WEDLOCK; AND AMENDING SECTIONS 50-15-112 AND 50-15-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-15-112, MCA, is amended to read:

**"50-15-112. Inspection of records and issuance of copies limited.** (1) The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

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(2) "Tangible interest" includes but is not limited to the interests of the persons described in 50-15-206 for the purposes of custody *or child support* actions, social security eligibility determinations, or Indian tribal enrollment determinations."

Section 2. Section 50-15-206, MCA, is amended to read:

**"50-15-206. Permissible disclosure of birth out of wedlock.** (1) Disclosure of birth *out of wedlock* or information from which *birth out of wedlock* can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

(b) upon request of the department of social and rehabilitation services, the department of family services, *the department of revenue,* or a licensed adoption agency for purposes of custody *or child support actions,* social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 16, 1989.

## CHAPTER NO. 119

[SB 177]

AN ACT CREATING AN ADMINISTRATIVE PROCEDURE FOR DETERMINING PATERNITY OF CHILDREN RECEIVING CHILD SUPPORT ENFORCEMENT SERVICES FROM THE STATE; AUTHORIZING THE DEPARTMENT OF REVENUE TO DETERMINE PATERNITY IN CONTESTED AND UNCONTESTED CASES; COMPELLING PATERNITY BLOOD TESTS WHEN PATERNITY IS CONTESTED; CREATING A REBUTTABLE PRESUMPTION OF PATERNITY BASED ON PATERNITY BLOOD TEST RESULTS; EXPEDITING RESOLUTION OF CONTESTED PATERNITY CASES IN DISTRICT COURT; AND AMENDING SECTION 40-5-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-5-201, MCA, is amended to read:

**"40-5-201. Definitions.** As used in this part, the following definitions apply:

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*(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.*

*(2)* "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States *and for whom:*

*(a) support rights are assigned under 53-2-613;*

*(b) a public assistance payment has been made;*

*(c) the department is providing support enforcement services under 40-5-203; or*

*(d) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.*

*(3)* "Department" means the department of revenue.

*(4)* "Director" means the director of the department of revenue or his authorized representative.

*(5)* "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

*(6)* "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

*(7)* "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

*(8)* "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

*(9) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.*

*(10)* "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

*(11)* "Responsible parent" means the natural or adoptive parent of a dependent child.

*(12)* "Support debt" or "support obligation" means:

(a) the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support; or

(b) the sum created by a decree or order of any court of appropriate jurisdiction ordering a sum to be paid as spousal maintenance under chapter 4, part 2, of this title when the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent."

Section 2. **Jurisdiction and venue.** (1) For purposes of an administrative action brought under [sections 2 through 8], personal jurisdiction is established in the department over any person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father.

(2) Personal jurisdiction over the persons described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under [sections 2 through 8] may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located.

Section 3. **Establishment of paternity — notice of paternity determination — contents.** (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of [sections 2 through 8]. An administrative hearing held under the provisions of [sections 2 through 8] is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in [sections 2 through 8].

(2) It is presumed to be in the best interest of a child to legally determine and establish his paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under [sections 2 through 8], if a man acknowledges his paternity of a child in writing and such acknowledgment is filed with the department, the department may enter an order establishing legal paternity. An acknowledgment is binding on a parent who executes it, whether or not he is a minor.

(4) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve such notice unless it has:

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(a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(5) Service on the alleged father of the notice of paternity determination shall be made as provided in [section 2(2)]. The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against him without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) he is subject to compulsory blood testing;

(ii) a blood test may result in a presumption of paternity; and

(iii) he may request a trial in district court to determine paternity before the final administrative decision is made.

(6) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(7) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child.

Section 4. **Establishment of paternity — administrative hearing — subpoena — compulsory blood testing.** (1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.

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(2) If the department does not receive a timely written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the tenth day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in [section 6(3)].

(3) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in subsection (1), reasonable cause may be established by affidavit of the child's mother.

Section 5. **Paternity blood tests — use of expert's affidavit — effect of test results.** (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity blood test required by [section 4]. If the issue of paternity is referred to the district court under [section 7], the expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources.

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish such chain of custody.

(3) If the scientific evidence resulting from a blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity shall be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weighed in conjunction with other evidence to establish paternity.

Section 6. **Effect of order establishing paternity — birth records — relief from order.** (1) An administrative order of the department

declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall file a copy of its order with the department of health and environmental sciences, which shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the time frames provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under [sections 3 through 6] may be reviewed under the provisions of Title 2, chapter 4, part 7.

Section 7. **Referral of paternity issue to district court — record — parties — exclusion of other matters — fees.** (1) If the scientific evidence resulting from a blood test does not exclude the alleged father and he continues to deny paternity, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in [sections 2 through 8], proceedings in the district court shall be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service thereof;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father as provided in [section 2 (2)] that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that such an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this

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section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110.

Section 8. **District court proceedings — objection to tests — additional tests.** (1) If an alleged father objects to the procedures for or the results of a paternity blood test, he shall file a written objection with the court within 20 days after service of the notice required by [section 7(3)]. The court shall order an additional paternity blood test if a written objection is filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(3) When a paternity blood test excludes an alleged father from possible paternity, the test shall be conclusive evidence of nonpaternity of the alleged father for all purposes in the district court.

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Codification instruction.** [Sections 2 through 8] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 2 through 8].

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 16, 1989.

# CHAPTER NO. 120

[SB 281]

AN ACT TO REQUIRE ADMITTANCE OF HOMELESS CHILDREN TO PUBLIC SCHOOLS AS REQUIRED BY P.L. 100-77; AMENDING SECTION 20-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-5-101, MCA, is amended to read:

**"20-5-101. Admittance of child to school.** (1) The trustees shall assign and admit any child to a school in the district when the child is:

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(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but has not yet reached his 19th birthday;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to *the* school.

(2) The trustees of any district *may* assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section.

*(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Act (P.L. 100-77), to a school in the district regardless of residence. Tuition for a nonresident child shall be paid in accordance with the tuition provisions of this title.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

# CHAPTER NO. 121

[SB 72]

AN ACT INCREASING THE MAXIMUM SEMITRAILER LENGTH ALLOWED WITHOUT A SPECIAL PERMIT; EXCLUDING A TRUCK TRACTOR-SEMITRAILER-SEMITRAILER COMBINATION FROM THE OVERALL LENGTH LIMIT; LIMITING THE MAXIMUM LENGTH FOR STINGER-STEERED AUTOMOBILE OR BOAT TRANSPORTERS; ALLOWING TRIPLE SADDLE-MOUNT COMBINATIONS; AND AMENDING SECTION 61-10-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-10-104, MCA, is amended to read:

"**61-10-104. Length.** (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 40 feet.

(2) *(a)* When used in a truck tractor-semitrailer combination, the semitrailer may not exceed *53* feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer *or a truck tractor-semitrailer-semitrailer*

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combination, the semitrailer and trailer *or the two semitrailers* may not exceed 28 ½ feet each in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, *and truck tractor-semitrailer-semitrailer* combinations are not subject to an overall combination length limit.

*(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.*

*(c)* All other combinations of vehicles may not have an overall length, inclusive of front and rear bumpers, in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination shall be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than *three* motor vehicles attached to it by the *triple* saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of 65 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have an overall length, inclusive of front and rear bumpers, in excess of 65 feet."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

# CHAPTER NO. 122

[SB 194]

AN ACT REVISING ELIGIBILITY REQUIREMENTS FOR SERVICE AND EARLY RETIREMENT UNDER THE SHERIFFS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-7-501 AND 19-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-7-501, MCA, is amended to read:

**"19-7-501. Eligibility and application for service retirement — commencement of allowance.** (1) *(a) A member initially elected or*

*appointed before July 1, 1989, who has completed at least 24 years of service may retire on a service retirement allowance.*

*(b)* A *member initially elected or appointed on or after July 1, 1989,* who has completed at least *24* years of service and who has reached the age of *50* years may retire on a service retirement allowance.

*(2) A member electing to retire shall apply in writing* to the board not less than 30 days or more than 90 days from the desired date of retirement.

*(3)* The retirement allowance must commence on the first day of the month following the member's last day of membership service."

Section 2. Section 19-7-502, MCA, is amended to read:

**"19-7-502. Early retirement option.** If a member has served *15* years of creditable service as a sheriff and has reached the age of *50* years, he is granted the option and privilege of retiring, and in such case his retirement allowance shall be the actuarial equivalent of his retirement allowance as otherwise accrued, based upon payment commencing when he would have completed *24* years of creditable service or reached age *60*, whichever is less."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved March 18, 1989.

## CHAPTER NO. 123

[SB 71]

AN ACT CHANGING THE FILING DEADLINE FOR ELECTION OF COUNTY PARK DISTRICT COMMISSIONERS FROM 30 DAYS TO 75 DAYS PRIOR TO THE ELECTION; AND AMENDING SECTION 7-16-2421, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-16-2421, MCA, is amended to read:

**"7-16-2421. Election of commissioners.** (1) After appointment of the initial commission and except in the case of vacancies, all members of the county park district commission must be elected by the electors of the district.

(2) The election of members to the commission must be held in conjunction with the school elections held pursuant to 20-3-304.

(3) Candidates for the office of member of the county park district commission must be nominated by petition filed with the office of the election administrator at least *75* days prior to the election day and signed by at least five electors of the district.

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(4) If no nomination petition is filed for an office, the county governing body shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office. If there are no petitions of nomination for members of the commission, no election need be held.

(5) The term of office of elected members commences upon their being elected and qualified. The term of office of an elected member of the county park district commission is 4 years, except that a simple majority of the members of the first elected board shall serve terms of 2 years, with a minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

(6) A vacancy in the office of a member must be filled by appointment by the remaining members of the commission. The term of the appointed member expires upon the election and qualification of an elected successor or upon the election of a member to fill the unexpired term of the vacant office. The election must be held at the next scheduled school election."

Approved March 18, 1989.

## CHAPTER NO. 124

[SB 259]

AN ACT TO EXEMPT A PROPOSAL ESTABLISHING A LICENSING PROGRAM PURSUANT TO FEDERAL LAW FROM THE REQUIREMENT THAT THE LEGISLATIVE AUDIT COMMITTEE REVIEW THE PROPOSAL AND ISSUE A REPORT ASSESSING ITS MERITS, WHICH REPORT MUST BE ATTACHED TO A BILL CONTAINING THE PROPOSAL BEFORE THE BILL MAY BE REPORTED OUT OF A COMMITTEE DURING A LEGISLATIVE SESSION; REQUIRING A REPORT BY CERTAIN AGENCIES; AMENDING SECTION 2-8-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, Title 2, chapter 8, part 2, MCA, requires that a proposal to establish a new licensing board of the Executive Branch of state government that would regulate and certify or license an occupation be submitted to the Legislative Audit Committee for review at least 180 days before the first day of the next regular legislative session; and

WHEREAS, the Legislative Audit Committee may not review the proposal and issue a report assessing its merits unless the proposal was submitted to the Committee at least 180 days before the first day of the next regular legislative session; and

WHEREAS, section 5-4-207, MCA, precludes a bill containing such a proposal from being reported out of committee during a legislative session unless a Legislative Audit Committee report assessing its merits is attached to the bill; and

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WHEREAS, in Montana and throughout the nation, evidence is accumulating that protection of public health requires that at least minimum training and competence standards should be required of persons who install underground storage tanks containing regulated substances, as well as of those who install, remove, or otherwise work with asbestos-containing materials; and

WHEREAS, the Department of Health and Environmental Sciences is required by federal law to create an asbestos workers' licensing program and may be required to administer the federal underground storage tank program if it creates a tank installer licensing or certification program; and

WHEREAS, the statutory requirements previously cited effectively prevent enactment during the 1989 regular legislative session of legislation requiring that certification or licensure standards be met by underground storage tank installers or persons working with asbestos and may thereby prevent acceptance or retention of federal grants or a delegation of a federal program; and

WHEREAS, protection of public health requires that the 1989 Legislature be able to consider and pass such legislation.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-8-202, MCA, is amended to read:

"**2-8-202. Definitions.** In this part, the following definitions apply:

(1) "Applicant" means the persons or organization proposing state licensing for an occupation or profession.

(2) "Committee" means the legislative audit committee.

(3) "License" means a permit, certificate, approval, registration, charter, or other form of permission required by law as a condition of practicing a profession or occupation.

(4) "Licensing" means a regulatory process that includes but is not limited to the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(5) "Licensing board":

*(a)* means an office, position, commission, or any other entity or instrumentality of the executive branch of state government that is responsible for licensing members of an occupation or profession;

*(b) does not mean an office, position, commission, or other entity or instrumentality of the executive branch of state government that is required by federal law to issue a license or that may, as a result of issuing the license, receive as an integral part of a regulatory program a delegation of primary enforcement responsibility for a program established by state and federal law.*"

Section 2. **Report required from excepted agencies.** An agency to which the exception contained in 2-8-202(5)(b) applies shall, before issuing

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any licenses subject to that exception, file with the legislative audit committee a report demonstrating, to the extent practicable, those matters referred to in 2-8-204(1).

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 2, chapter 8, part 2, and the provisions of Title 2, chapter 8, part 2, apply to [section 2].

Section 4. **Retroactive applicability.** [Sections 1 and 2] apply retroactively, within the meaning of 1-2-109, to January 1, 1989.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

## CHAPTER NO. 125

[SB 90]

AN ACT TO REPEAL THE PROVISION IN THE CORPORATION LICENSE OR INCOME TAX LAW FOR REDUCTION OF DEDUCTIONS RELATED TO EXCLUDED INCOME; AND REPEALING SECTION 15-31-116, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 15-31-116, MCA, is repealed.

Approved March 18, 1989.

## CHAPTER NO. 126

[SB 66]

AN ACT ALLOWING SCHOOL EMPLOYEES TO PARTICIPATE IN INTERVIEWS OF CHILDREN IN KINDERGARTEN THROUGH 8TH GRADE IN ABUSE OR NEGLECT INVESTIGATIONS; AMENDING SECTIONS 41-3-202 AND 41-3-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-3-202, MCA, is amended to read:

**"41-3-202. Action on reporting.** (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the

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discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child. *If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child, if the child is enrolled in kindergarten through 8th grade.*

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency shall be responsible for ensuring that the report is made to the department of family services, its local affiliate, and the county attorney of the county in which the facility is located."

Section 2. Section 41-3-205, MCA, is amended to read:

**"41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

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(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or his guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(k) a foster care review committee established under 41-3-1115; *or*

*(l) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202.*

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved March 18, 1989.

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# CHAPTER NO. 127

[SB 46]

AN ACT TO REQUIRE A DISCONTINUED SCHOOL DISTRICT, WHICH HAS DISPOSED OF ITS CASH, TO PAY ANY REMAINING OUTSTANDING TUITION OBLIGATION BY IMPOSING A MILL LEVY ON THE PROPERTY OF THE DISTRICT, EXCEPT WHEN THE TUITION OBLIGATION HAS BEEN ASSUMED BY THE CONSOLIDATED OR ANNEXING DISTRICT; AMENDING SECTION 20-6-413, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-6-413, MCA, is amended to read:

**"20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt.** Whenever a district shall cease to exist in any manner prescribed in this title, except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of such district shall be allocated in the following manner:

(1) Any cash to the credit of the district shall be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund shall be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash shall be transferred by the county treasurer to the credit of the district or districts assuming its territory. When the territory is assumed by more than one district, the remaining cash shall be prorated between the districts on the basis of the number of children attending school and residing within the territory assumed by each district as determined by the county superintendent.

*(3) If any tuition debt remains as an obligation of the district, the tuition debt shall be the obligation of the taxable property of the discontinued district, except when the tuition debt has been assumed by the consolidated or annexing district. The tuition debt shall be financed by a mill levy on the property of the discontinued district and paid from these proceeds by the county superintendent.*

*(4)* If any debts, other than bonded indebtedness *and tuition*, remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1) above, the debts shall be assigned in the same manner prescribed for the transfer of cash under subsection (2) above."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved March 18, 1989.

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# CHAPTER NO. 128

[SB 3]

AN ACT TO CHANGE THE TAX REPORT FILING REQUIREMENT FOR THE LICENSE TAX ON METAL MINES AND THE RESOURCE INDEMNITY TRUST TAX FROM QUARTERLY TO ANNUALLY; TO INCREASE THE PENALTY PROVISIONS; TO CHANGE THE DATE FOR PAYMENT OF THE TAXES; AMENDING SECTIONS 15-37-102, 15-37-104 THROUGH 15-37-106, 15-37-108, AND 15-38-105 THROUGH 15-38-107, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-37-102, MCA, is amended to read:

**"15-37-102. Gross value of metal mine yield — computation.** The "*annual* reporting date", as used in this part, means the last day of the calendar *year*. The "*annual* gross value of product", as used in this part, means the market value of all merchantable metals or precious and semiprecious gems and stones extracted or produced each calendar *year* from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction, or treatment of any such ores. Whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the *annual* gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby as shown by the gross smelter returns of such metals or mineral product in dollars and cents without any deductions for costs of smelting, reduction, or treatment or otherwise, based upon the average quotations of the price of such metals or mineral products in the city of New York, as evidenced by some established authority or market report, giving the market reports during the calendar *year* for which a report is being made. Should there be no quotation covering any particular product, the department of revenue shall fix the value of such gross product or such portion thereof in such a manner as may seem equitable."

Section 2. Section 15-37-104, MCA, is amended to read:

**"15-37-104. Mine operator's statement of gross value — reports and sampling.** (1) Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced must, not later than *March 31* following the *end* of each *calendar year* when engaged in or carrying on any such business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar *year* immediately preceding. If good cause is shown, the department may grant a reasonable extension of the

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time for filing statements. The statement shall be in the form prescribed by the department of revenue and shall show the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore or concentrate has been shipped or sold during the period covered by the statement and such other information as the department may require;

(e) the gross yield of such ores, concentrates, mineral products, or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of said ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the *annual* gross value of product in dollars and cents.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property.

(4) If the *annual* statement of gross value described herein is not filed with the department *by March 31* following the calendar *yearend*, a penalty shall be assessed. The penalty shall be the greater of $25 or *10%* of the tax due under this part. If good cause is shown, the department may waive the penalty."

Section 3. Section 15-37-105, MCA, is amended to read:

**"15-37-105. Computation and payment of tax.** (1) The tax due under this part is computed according to 15-37-103 and is due and payable on or before March *31* of each year for the products produced in the preceding calendar year. The tax due under this part becomes delinquent as of midnight on March *31* of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest at a rate of 1% a month or any part thereof.

(2) If any such person has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the department shall compute the gross value of such portion of said mine's product so sold

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or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable."

Section 4. Section 15-37-106, MCA, is amended to read:

**"15-37-106. Procedure in case of failure to file statements.** If any person shall fail, refuse, or neglect to make and file *the* required *annual statement* of gross yield for a production year on or before March *31* of the year immediately following the production year, the department of revenue shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information which the department may be able to obtain the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid and shall make and file a statement showing the amount of such gross value of product and shall ascertain, determine, compute, and assess the amount of the license taxes due from and to be paid by such person and shall immediately give notice to such person in the same manner as though such statement had been filed within time and shall proceed to collect such license tax, adding thereto and collecting therewith if the same is delinquent the same penalty and interest as provided for herein for other delinquencies."

Section 5. Section 15-37-108, MCA, is amended to read:

**"15-37-108. Delinquent taxes — penalty.** All license taxes assessed under the provisions of this part shall become delinquent if not paid on or before midnight of March *31* of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax a penalty of *10%*. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the *10%* penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March *31* of the year immediately following the production year."

Section 6. Section 15-38-105, MCA, is amended to read:

**"15-38-105. Report of gross yield from mines.** A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or tailings, or other place or source shall *file an annual* statement of gross yield of the

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mineral from each mine owned or worked by that person during the *calendar year.* This *statement must* be in the form prescribed by the department and shall be signed by the person or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any. *Metal producers* shall *deliver the statement* to the department on or before *March 31* following the end of the calendar *year. Mineral producers, including oil and gas producers, shall deliver the statement to the department on or before the 60th day following the end of the calendar year.* The statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine;

(2) the description and location of the mine;

(3) the quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other commercially valuable constituents of the ores or mineral products or deposits yielded to the person engaged in mining measured by standard units of measurement;

(5) the gross yield or value in dollars and cents."

Section 7. Section 15-38-106, MCA, is amended to read:

**"15-38-106. Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter shall be paid by each person to which the tax applies, on or before March *31*, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time the statement of yield for the *preceding calendar year* is filed with the department.

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine the *statement* and compute the taxes thereon, and the amount computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess shall be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 8. Section 15-38-107, MCA, is amended to read:

**"15-38-107. Procedure in case of failure to file statement.** (1) If any person fails, refuses, or neglects to make and file a statement and return it within the time prescribed, the department shall immediately after

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such time has expired determine, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the gross yield of the mineral of such person from such business during the calendar *year* immediately preceding the *year* in which the statement is to be filed and shall fix the amount of the tax due to the state from such person for such calendar *year* and shall add to the amount of such tax a penalty of $25 or *10%*, whichever is greater.

(2) If any person fails, refuses, or neglects to pay the tax when due, the department shall immediately determine, as nearly as may be possible from any information which the department may be able to obtain, the total gross value of product of the person from the business during the year for which the tax is due and shall fix the amount of tax due to the state and shall add to the amount a penalty of *10%* plus interest at the rate of 1% a month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(3) The department shall mail to the person failing to file *an annual* statement or pay any tax a letter setting forth the amount of tax, penalty, and interest due. The letter shall advise that if payment is not received, a warrant for distraint may be filed.

(4) Penalties may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-38-105 or the failure to pay the tax required by 15-38-106 is provided to the department."

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Retroactive applicability.** [Sections 1 through 3] apply retroactively, within the meaning of 1-2-109, to all taxable periods beginning after December 31, 1988.

Approved March 18, 1989.

# CHAPTER NO. 129

[SB 21]

AN ACT MAKING THE DEPARTMENT OF REVENUE A CRIMINAL JUSTICE AGENCY FOR PURPOSES OF THE MONTANA CRIMINAL JUSTICE INFORMATION ACT AND ALLOWING IT TO DESIGNATE DEPARTMENT EMPLOYEES AS PEACE OFFICERS, WITH SEARCH, SEIZURE, AND ARREST POWERS, FOR THE ENFORCEMENT OF LAWS RELATING TO PUBLIC ASSISTANCE; AMENDING SECTION 53-2-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-2-501, MCA, is amended to read:

**"53-2-501. Investigations and enforcement actions by department of revenue.** *(1)* When requested by the department of social and rehabilitation services, the department of revenue shall:

*(a)* investigate matters relating to public assistance and vendor payments, including but not limited to the claim for an acceptance of public assistance benefits by public assistance recipients and the receipt and disbursal of public assistance funds by state, county, or other governmental agencies;

*(b)* institute civil or criminal actions in the appropriate courts to enforce the public assistance laws and violations thereof.

*(2) For purposes of the enforcement of and investigations relating to laws governing public assistance and vendor payments, the department of revenue is a criminal justice agency, as defined in 44-5-103, and employees designated by the department have peace officer status with the powers of search, seizure, and arrest."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

# CHAPTER NO. 130

[SB 135]

AN ACT TO CLARIFY A JUDGMENT DEBTOR'S ENTITLEMENT TO EXEMPTION FROM JUDGMENT OF IMPLEMENTS, PROFESSIONAL BOOKS, AND TOOLS; AND AMENDING SECTION 25-13-609, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-13-609, MCA, is amended to read:

**"25-13-609. Personal property exempt subject to value limitations.** A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed $4,500 in aggregate value, to the extent of a value not exceeding $600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed $1,200 in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed $3,000 in *aggregate* value, in any implements, professional books, *and* tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

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(4) the judgment debtor's interest, not to exceed $4,000 in value, in any unmatured life insurance contracts owned by him."

Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 18, 1989.

# CHAPTER NO. 131

[SB 52]

AN ACT TO PROVIDE THAT THE TAX LIEN FOR INHERITANCE AND ESTATE TAXES MAY BE PERFECTED AND EXECUTED UPON AS OTHER TAX LIENS ARE PERFECTED AND EXECUTED UPON; AMENDING SECTIONS 15-1-702, 72-16-432, 72-16-477, AND 72-16-478, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-1-702, MCA, is amended to read:

**"15-1-702. Issuance of warrant.** (1) If a tax administered and collected by the department is not paid within 30 days of the due date, the department may issue a notice to the taxpayer notifying him that unless payment is received within 30 days of the date of the notice a warrant for distraint may be issued. Thirty days after the date of the notice, the department may issue a warrant if payment is not received.

(2) Use of the procedure to issue a warrant under this section does not preclude use of the procedure under 15-1-703 if the department determines that it is appropriate to utilize 15-1-703."

Section 2. Section 72-16-432, MCA, is amended to read:

**"72-16-432. Tax lien — continuing personal liability — filing of warrant for distraint.** (1) All property which is affected by the death of the decedent and on which inheritance, estate, or death taxes are due under the laws of this state is subject to the lien of the state of Montana until such taxes have been paid. This lien follows all property sold in the course of administration or distributed under chapters 1 through 5 until such time as all inheritance taxes have been paid and a receipt showing payment thereof has been filed with the clerk of court, subject to subsection (2).

(2) Every such tax shall be and remain a lien upon the property transferred for a period of 10 years from the time of the death of the decedent, whether said death occurred before or after July 1, 1965, unless sooner paid.

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(3) The person to whom the property is transferred and the personal representatives and trustees of every estate so transferred shall be personally liable for such tax until its payment.

*(4) (a) The lien provided for in subsection (1) shall be perfected by the filing of a warrant for distraint by the department of revenue with the clerk of a district court in the county in which the estate is being administered or in a county where any of the estate property is located or has been transported.*

*(b) The warrant shall be filed 60 days after the department has determined the amount of any tax or, if the department's determination has been appealed to the district court, the warrant shall be filed after the court's determination has become final.*

*(c) The procedures provided for a hearing before execution of a warrant for distraint contained in 15-1-705 do not apply to warrants filed under this section.*

*(5) The department or the sheriff of a county to whom a writ of execution is directed may proceed to execute upon the warrant in the same manner as prescribed for the execution upon a judgment, except that execution may be had as a matter of right for a period of 10 years, as provided in subsection (2).*"

Section 3. Section 72-16-477, MCA, is amended to read:

"**72-16-477. Filing of lien.** The lien imposed by 72-16-472 is not valid against a purchaser, holder of a security interest, construction lien, or judgment lien creditor until *a warrant for distraint* has been filed by the department *pursuant to 72-16-432.*"

Section 4. Section 72-16-478, MCA, is amended to read:

"**72-16-478. Period of lien.** The lien imposed by 72-16-472 arises at the time *a warrant for distraint* is filed under *72-16-432* and continues until liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

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# CHAPTER NO. 132

[SB 39]

AN ACT TO PROHIBIT A PERSON WHO IS CONVICTED OF VIOLATING CERTAIN STATE HUNTING AND FISHING LAWS FROM APPLYING FOR A SPECIAL LICENSE WITHIN 5 YEARS AFTER THE CONVICTION; AND AMENDING SECTION 87-1-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-102, MCA, is amended to read:

**"87-1-102. Penalties.** (1) A person violating any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than $50 or more than $500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall be subject to forfeiture of his license and privilege to hunt, fish, or trap within this state for a period of not less than 24 months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than $500 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined not less than $300 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than $200 or more than $600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than $50 or more than $200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packagi..g a fur-bearing animal

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or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than $50 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from the date of conviction and any pelts possessed unlawfully must be confiscated.

(f) A person convicted of hunting, fishing, or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than $500 or more than $1,000.

*(3) A person convicted or who has forfeited bond or bail under subsection (2) and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later.*

*(4)* Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Approved March 18, 1989.

# CHAPTER NO. 133

[SB 243]

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE PROVIDE APPLICATION FORMS FOR APPROVING ENERGY-CONSERVING INVESTMENT DEDUCTIONS AND CREDITS; AND AMENDING SECTIONS 15-32-103 AND 15-32-106, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-32-103, MCA, is amended to read:

**"15-32-103. Deduction for energy-conserving investments.** (1) In addition to all other deductions from gross corporate income allowed in computing net income under chapter 31, part 1, a taxpayer may deduct a portion of his expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

| If the installation or investment is made in a residential building: | If the installation or investment is made in a building not used as a residence: |
|---|---|
| 100% of first $1,000 expended | 100% of first $2,000 expended |
| 50% of next $1,000 expended | 50% of next $2,000 expended |
| 20% of next $1,000 expended | 20% of next $2,000 expended |
| 10% of next $1,000 expended | 10% of next $2,000 expended |

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(2) This tax treatment is subject to approval of the department as provided in 15-32-106 and may not be claimed for so much of the expenditure and capital investment as is financed by a state, federal, or private grant for energy conservation."

Section 2. Section 15-32-106, MCA, is amended to read:

**"15-32-106. Procedure for obtaining benefit of deduction or credit.** The department of revenue shall provide forms on which a taxpayer may apply for *a* tax *credit* under 15-32-109. The department of revenue shall approve *a deduction or credit under 15-32-103 or 15-32-109* which demonstrably promotes energy conservation or utilizes a recognized nonfossil form of energy generation. The department of revenue may refer *a deduction or credit* involving energy generation to the department of natural resources and conservation for its advice, and the department of natural resources and conservation shall respond within 60 days. The department of revenue may refer *a deduction or credit* involving energy conservation to the department of administration for its advice, and the department of administration shall respond within 60 days. The department of revenue may deny *a deduction or credit* which it finds to be impractical or ineffective."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

# CHAPTER NO. 134

[SB 183]

AN ACT INCLUDING THE LITTLE MISSOURI RIVER BASIN IN THE WATER RESERVATION PROCESS; ESTABLISHING A JULY 1, 1989, PRIORITY DATE FOR RESERVATIONS IN THE LITTLE MISSOURI RIVER BASIN; ESTABLISHING A JULY 1, 1992, DEADLINE FOR RESERVATION DETERMINATIONS IN THE MISSOURI RIVER BASIN ABOVE FORT PECK DAM AND A DECEMBER 31, 1993, DEADLINE FOR RESERVATION DETERMINATIONS IN THE LITTLE MISSOURI RIVER BASIN; AMENDING SECTION 85-2-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-331, MCA, is amended to read:

**"85-2-331. Reservations within Missouri River basin and Little Missouri River basin.** (1) The state or any agency or political subdivision thereof or the United States or any agency thereof that desires to apply for a reservation of water in the Missouri River basin *or in the Little Missouri River basin* shall file an application pursuant to 85-2-316 no later than:

*(a)* July 1, 1989, for reservation of water *above* Fort Peck dam*; or*

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*(b)* July 1, 1991, *for reservation of water below Fort Peck dam and in the Little Missouri River basin.*

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin *and the Little Missouri River basin.*

(3) (a) Before *July 1, 1992,* the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for reservations of water in the Missouri River basin above Fort Peck dam.

(b) Before December 31, 1993, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam *and in the Little Missouri River basin.*

(c) The board shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) Water reservations approved by the board under this section have a priority date of July 1, 1985, *in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin.* If the department issues a permit under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the board may subordinate the reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any reservation. The board shall by order establish the relative priority of applications approved under this section."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

## CHAPTER NO. 135

[SB 63]

AN ACT ALLOWING CREATION OF THE POSITION OF EXECUTIVE SECRETARY OF THE BOARD OF MEDICAL EXAMINERS; ESTABLISHING QUALIFICATIONS FOR THE POSITION; AND AMENDING SECTION 37-3-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-3-203, MCA, is amended to read:

**"37-3-203. Powers and duties.** The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules shall be fair, impartial, and nondiscriminatory;

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(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance; *and*

*(5) select an executive secretary to be hired by the department to:*

*(a) provide services to the board in connection with the board's duties under this chapter;*

*(b) assist in prosecution and matters of license discipline under this chapter; and*

*(c) administer the board's affairs.*"

Section 2. **Executive secretary.** To perform the services provided for in 37-3-203(5), the department shall hire a person selected by the board who:

(1) is a citizen of the United States;

(2) is of good moral character; and

(3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 37, chapter 3, part 2, and the provisions of Title 37, chapter 3, part 2, apply to [section 2].

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

# CHAPTER NO. 136

[SB 53]

AN ACT TO REQUIRE THAT MONEY RECEIVED BY A COUNTY TREASURER FOR THE PAYMENT OF INHERITANCE TAXES BE DEPOSITED WITH THE STATE TREASURER; AND AMENDING SECTION 72-16-439, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 72-16-439, MCA, is amended to read:

"**72-16-439. Advance payment — relief from interest or penalty — discount — refund of excess paid.** (1) Any person from whom

such tax is or may be due may make an estimate of and pay the same to the county treasurer, who shall receipt therefor, at any time before the same is determined by the department of revenue and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined.

(2) In the event the person making payment has done so in accordance with the provisions of 72-16-440 pertaining to the allowance of a 5% discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the 5% discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by paying the amount estimated by the taxpayer to the county treasurer.

(3) The money shall be paid to the county treasurer, who shall pay the *money* to the *state treasurer* on or before the *20th* day of the month following the collection.

(4) As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the department."

Approved March 18, 1989.

# CHAPTER NO. 137

[HB 430]

AN ACT PERMITTING CERTAIN FINANCIAL INSTITUTIONS TO INVEST FUNDS IN UNITED STATES OBLIGATIONS EITHER DIRECTLY OR IN THE FORM OF SECURITIES OF OR OTHER INTERESTS IN CERTAIN INVESTMENT COMPANIES OR INVESTMENT TRUSTS; AND AMENDING SECTIONS 17-6-103, 32-1-107, 32-1-421, 32-1-424, AND 32-2-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-6-103, MCA, is amended to read:

**"17-6-103. Security for deposits of public funds.** The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;

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(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; and

(j) federal home loan mortgage corporation;

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of *the* subdivision or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due on all bonds payable *from the* revenues during the outstanding term of *the* bonds;

(6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(7) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of commerce, the bonds and other obligations made eligible for investment in 32-1-424(3)*(a)* and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

(8) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(9) undertaking or guarantees issued by a surety company authorized to do business in the state;

(10) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

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(11) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(12) bonds issued pursuant to Title 90, chapter 6, part 1;

(13) revenue bonds issued by any unit of the university system of the state of Montana;

(14) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow; and

(15) linked deposit loan obligations incurred under 80-14-203. **(Subsection (15) terminates June 30, 1989—sec. 6, Ch. 57, L. 1987.)"**

Section 2. Section 32-1-107, MCA, is amended to read:

**"32-1-107. Trust company defined — purposes for which may be formed.** The term "trust company" means any corporation *that* is incorporated under the laws of this state for any one or more of the following purposes:

(1) to receive *money* in trust and to accumulate the *money* at rates of interest as may be obtained or agreed upon or to allow interest *on the money* as may be agreed upon;

(2) to accept and execute all trusts and perform *the* duties committed to them by any person or by any corporations or may be committed or transferred to them by order of any of the courts of record of this state or any other state or of the United States;

(3) to take and accept by grant, assignment, transfer, devise, or bequest and hold any real or personal estate or trust created in accordance with the laws of this state or any other state or of the United States and execute *the* legal trusts in regard to the same on *the* terms as may be declared, established, or agreed upon in regard *to the estate or trust*;

(4) to act as agent for the investment of money for other persons or corporations and as agents for persons and corporations for the purpose of issuing, registering, transferring, or countersigning the certificates of stock, bonds, or other evidence of debt of any corporation, association, municipality, state, or public authority as may be agreed upon;

(5) to accept from and execute trusts for married persons in respect to their individual property, whether real or personal, and act as agents for them in the management of *the* property and generally to have and exercise powers as are usually had and exercised by trust companies;

(6) to act as trustee, assignee, or receiver in all cases where it *is* lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver and to be appointed a trustee, assignee, or receiver and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person and estate of any minor or minors or of the estate of any person of unsound mind, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estates;

(7) to loan money upon unencumbered real estate, collateral, or personal security and execute and issue notes and debentures payable at a

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future date and to pledge its mortgages upon real estate and other securities as security *for the notes and debentures*;

(8) to buy and sell:

(a) government, state, county, municipal, and other bonds. *The trust company may invest in United States obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:*

*(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and*

*(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.*

(b) all kinds of negotiable, nonnegotiable, and commercial paper, stocks, and other investment securities; and

(c) gold and silver bullion, foreign coins, bills of exchange, and foreign and domestic exchange;

(9) to accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors; to take and receive from any individual or corporation on deposit for safekeeping and storage, gold and silver plate, jewelry, stocks, securities, and other valuable and personal property; to collect coupons, interest, and dividends on securities *described in this section*; and to rent out the use of safes and other receptacles on their premises upon terms and for compensation as may be agreed upon."

Section 3. Section 32-1-421, MCA, is amended to read:

**"32-1-421. Investment of capital of savings banks.** (1) The term "savings bank" as used in this section *means* any bank organized to do the business specified in 32-1-106.

(2) *(a)* At least one-half of the paid-in capital of a savings bank and one-half of the whole amount deposited *in the savings bank* must be invested in bonds or other securities of the United States or any of the states of the United States or any county, city, town, or school district of this state on which interest is regularly payable or federal land bank bonds or loaned *on* unencumbered real estate worth at least double the amount to be secured.

*(b)* The remainder may be invested in *bonds or* securities *listed in subsection (2)(a)* or in approved personal securities. *However, a* loan *may not* be made on personal securities of less than two responsible persons or collateral security to be approved by the directors, and *a* loan upon personal security *may not* be made to any person or partnership to an amount exceeding $10,000.

*(c) Investments in United States government obligations permitted under subsection (2)(a) or (2)(b) may be made either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:*

*(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and*

*(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.*

(3) *A* president, vice-president, director, or other officer or servant of a savings bank *may not* directly or indirectly borrow any of the funds of *the* bank or of its deposits or in any manner use the same in his private affairs or business. *A* director *may not* receive any pay, salary, or emolument until *the* interest as the directors have determined to allow depositors *has* been provided for in accordance with the regulations of the corporation.

(4) The real estate *that the* corporation may lawfully purchase, hold, and convey is *the real estate that is*:

(a) necessary for the proper transaction of its business, not exceeding in value $50,000;

(b) mortgaged to it in good faith for *money* loaned *pursuant to* this chapter or given as security for money loaned or advanced;

(c) purchased at the sale on judgment or decree obtained or rendered on money loaned or advanced.

(5) Savings banks organized under the provisions of this chapter *may* not purchase, hold, or convey real estate in any other case or for any other purpose than *is* specified *in subsection (4)* and *may* not buy or sell any personal property, except such as may be necessary for the proper transaction of its business or as may have been pledged, mortgaged, or assigned to it to secure *money* loaned or advanced."

Section 4. Section 32-1-424, MCA, is amended to read:

**"32-1-424. Investments of financial institutions.** (1) Trust and investment companies may lease, purchase, hold, and convey all real or personal property necessary to carry on their authorized business, as well as *the* real or personal property the board of directors considers necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts.

(2) The board of directors of *a* corporation may invest the capital and assets of the corporation and keep the *capital and assets* invested in securities to be approved by the board, and the board may make investments of its capital and assets and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or nonnegotiable

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notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school district of this state or any other state of the United States legally authorized to issue the *bonds or warrants*, or bonds or obligations of the United States.

(3) Notwithstanding other provisions of the law, it is lawful for a bank, trust company, investment company or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in:

*(a)* debentures issued by the federal housing administrator and in obligations of national mortgage associations; *and*

*(b) United States government obligations, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:*

*(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and*

*(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.*

*(4) An investment in United States government obligations as provided in subsection (3)(b) may not be made for a term longer than 5 years."*

Section 5. Section 32-2-406, MCA, is amended to read:

**"32-2-406. Investments.** (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States, *either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:*

*(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and*

*(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;*

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

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(d) improved real estate *that* has been sold under contract, including suburban homes but not including farm lands or mining property. However, the total amount remaining invested *in real estate*, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount invested *in real estate* may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property purchased, whichever is the lesser.

(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

# CHAPTER NO. 138

[HB 533]

AN ACT PERMITTING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO CONVERT CERTAIN DISABILITY RETIREMENTS TO SERVICE RETIREMENTS; AMENDING SECTIONS 19-3-1102, 19-6-612, AND 19-8-712, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-3-1102, MCA, is amended to read:

**"19-3-1102. Medical examination of disability retiree — cancellation and reinstatement.** (1) The board may, *in* its *discretion*, require the recipient of a *disability* retirement allowance to undergo *a* medical examination. The examination *must* be made by a physician or surgeon appointed by the board, at the place of residence of the recipient or another place mutually agreed upon. Upon the basis of the examination, the board shall determine whether the recipient is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by him when he retired or the duties proposed to be assigned to him. If the board determines that the recipient is not incapacitated or if the

recipient refuses to submit to medical examination, his retirement allowance *must* be canceled.

*(2) If the board determines that a recipient of a disability retirement allowance should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating his monthly allowance. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, he may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.*

*(3)* A *recipient* whose *disability* retirement allowance is canceled *because the board has determined that he is no longer incapacitated must* be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity if he had been an employee of the state or of the university. If he had been an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the retirement allowance has been canceled and that the former employee is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty *that* he may have or claim to have.

*(4)* If a *recipient* whose *disability* retirement allowance is canceled is not reemployed in a position subject to the retirement system, his service is considered, for the purposes of 19-3-703, to have been discontinued coincident with the commencement of his retirement allowance."

Section 2. Section 19-6-612, MCA, is amended to read:

**"19-6-612. Medical examination of disability retiree — cancellation of allowance.** (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he retired. If the board determines that the recipient is not incapacitated, his disability retirement allowance must be canceled when he is offered a position under subsection *(3)*. If the recipient refuses to submit to a medical examination, his retirement allowance must be canceled when he is notified of the determination of the board.

*(2) If the board determines that a recipient of a disability retirement allowance should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating his monthly allowance. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, he may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.*

*(3)* A *recipient* whose retirement allowance is canceled because *the board has determined that* he is no longer incapacitated *must* be reinstated

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to the position held by him immediately before his retirement or to a position in the same classification within his capacity, whichever is first open. The fact that he was retired for disability may not prejudice any right to reinstatement to duty *that* he may have or claim to have.

*(4)* The department of justice may request a medical or psychological review as to the ability of the *recipient* to return to work as a member of the highway patrol. If the board's findings are upheld, the department shall pay the cost of the review."

Section 3. Section 19-8-712, MCA, is amended to read:

**"19-8-712. Medical examination of disability retiree — cancellation of allowance.** (1) The board, in its discretion, may require the recipient of a disability retirement allowance to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by him when he retired. If the board determines that the recipient is not incapacitated, his disability retirement allowance must be canceled when he is offered a position under subsection *(3)*. If the recipient refuses to submit to a medical examination, his retirement allowance must be canceled when he is notified of the determination of the board.

*(2) If the board determines that a recipient of a disability retirement allowance should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating his monthly allowance. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, he may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.*

*(3)* A *recipient* whose retirement allowance is canceled because *the board has determined that* he is no longer incapacitated *must* be reinstated to the position held by him immediately before his retirement or to a position in the same classification within his capacity, whichever is first open. The fact that he was retired for disability may not prejudice any right to reinstatement to duty *that* he may have or claim to have.

*(4)* The department of fish, wildlife, and parks may request a medical or psychological review as to the ability of the *recipient* to return to work as a game warden. If the board's findings are upheld, the department of fish, wildlife, and parks shall pay the cost of the review."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

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# CHAPTER NO. 139

[HB 302]

AN ACT PROVIDING A MINIMUM MONTHLY RETIREMENT ALLOWANCE FOR CERTAIN MEMBERS OF THE MONTANA STATE GAME WARDENS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-8-603, 19-8-701, AND 19-8-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Minimum monthly retirement allowance.** (1) The following members who retired before July 1, 1989, or their beneficiaries are eligible to receive a minimum monthly retirement allowance as provided in subsection (2):

(a) a member who is 55 years of age or older and who is receiving a service retirement allowance, unless he is employed in a position covered by a retirement system under Title 19, chapters 3 through 13;

(b) a member who is receiving a disability retirement allowance; and

(c) a beneficiary receiving a survivorship allowance.

(2) (a) Except as provided in subsection (2)(b), on July 1, 1989, the monthly retirement allowance of a member eligible under subsection (1) may not be less than 2% of a probationary state game warden's base salary on July 1, 1989, for each year of the member's creditable service.

(b) A monthly retirement allowance increased under subsection (2)(a) may not exceed 60% of a probationary state game warden's base salary on July 1, 1989.

Section 2. Section 19-8-603, MCA, is amended to read:

**"19-8-603. Service retirement allowance.** (1) Upon retirement from service, the service retirement allowance consists of the state annuity plus the member's annuity.

(2) *Except as provided in [section 1], the* amount of the retirement allowance must equal 2% of the member's final salary for each year of creditable service."

Section 3. Section 19-8-701, MCA, is amended to read:

**"19-8-701. Disability retirement allowance.** (1) If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement, *except as provided in [section 1].*

(2) If the total disability is a direct result of any service to the department of fish, wildlife, and parks in line of duty and the contributor has had

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over 10 years of service, the state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half of his final salary, *except as provided in [section 1]*."

Section 4. Section 19-8-703, MCA, is amended to read:

**"19-8-703. Payments upon employment-related death.** If the board finds that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary, consisting of:

(1) a member's annuity which is the actuarial equivalent of the contributor's accumulated deductions; and

(2) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, *except as provided in [section 1]*, less the amount which is paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 8, and the provisions of Title 19, chapter 8, apply to [section 1].

Section 7. **Effective date.** [This act] is effective July 1, 1989.

Approved March 18, 1989.

## CHAPTER NO. 140

[HB 62]

AN ACT PROVIDING FOR AUDIT OF THE AFFAIRS OF CEMETERY DISTRICTS; REQUIRING AN ANNUAL REPORT PREPARED BY THE BOARD OF CEMETERY TRUSTEES; AMENDING SECTIONS 2-7-503, 2-7-514, 2-7-521, AND 7-35-2121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-7-503, MCA, is amended to read:

**"2-7-503. Audits of local governmental entities.** (1) The department shall audit the affairs of all:

(a) counties;

(b) incorporated cities and towns having a population of more than 300 in the most recent census taken under the direction of congress;

(c) first- and second-class school districts and third-class school districts that maintain a high school;

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(d) school district extracurricular funds for pupil functions;

(e) irrigation districts, except as provided in subsection (7);

(f) conservancy districts;

(g) fire districts and volunteer fire departments in unincorporated areas, towns, and villages supported by a mill levy, except as provided in subsection (6);

(h) fire department relief associations, except as provided in subsection (6); *and*

*(i) cemetery districts.*

(2) Each audit shall be made every 2 years and shall cover the immediately preceding 2 fiscal years of the governmental entity, unless annual audits are requested by the governmental entity.

(3) Each audit shall be initiated not later than 24 months from the close of the fiscal year for which the audit is conducted.

(4) In addition to the audits required by this section, the department may at any time conduct a special audit of the affairs of any governmental entity referred to in this part.

(5) The fee for the special audit shall be a charge based upon the costs incurred by the department in the conduct of such special audit. The audit fee shall be paid by the governmental entity to the state treasurer and deposited in the enterprise fund to the credit of the department.

(6) (a) Except as provided in subsection (6)(c), the department may not audit:

(i) a fire district which has an annual budget of less than $20,000 and in which fire protection is provided solely by a fire company composed only of volunteer firefighters organized under Title 7, chapter 33; or

(ii) a fire department relief association organized under Title 19, chapter 11, which has annual receipts, including earnings on invested funds, of less than $20,000, except for audits as provided under 19-11-206.

(b) Such fire district shall annually file with the board of county commissioners of the county in which the majority of the district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer of the fire company designated by the fire district trustees.

(c) The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.

(d) Such fire department relief association shall annually file with the municipality in which the fire department relief association is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the fire department relief association trustees. The municipality may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.

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(7) (a) Except as provided in subsection (7)(c), the department may not audit an irrigation district with annual expenditures of less than $30,000, excluding the payment of principal and interest on federal loans.

(b) Such irrigation district shall annually file with the clerk of the district court in the county in which the irrigation district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the irrigation district trustees.

(c) The district court may require an annual audit to be conducted by the department if it considers such audit to be in the public interest.

*(8) (a) Except as provided in subsection (8)(c), the department may not audit a cemetery district with annual expenditures of less than $25,000, excluding the payment of principal and interest on federal loans.*

*(b) Such cemetery district shall annually file with the clerk of the district court in the county in which the cemetery district is located an itemized account of all receipts and expenditures for the year, signed under oath by an officer designated by the cemetery district trustees.*

*(c) The board of county commissioners may require an annual audit to be conducted by the department if it considers such audit to be in the public interest."*

Section 2. Section 2-7-514, MCA, is amended to read:

**"2-7-514. Issuance and filing of audit report.** (1) Within 120 days after the completion of the field work, the department shall issue audit reports as follows:

(a) county audit reports to county commissioners, the county clerk and recorder, and the county attorney;

(b) city or town audit reports to the city or town governing body, the city or town chief financial officer, the city or town chief executive, and the city or town attorney;

(c) school district audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the clerk of the school district;

(d) school district extracurricular fund audit reports to the trustees, the county superintendent of schools, the state superintendent of public instruction, the county attorney, and the fund administrator;

(e) fire district or volunteer fire department audit reports to the trustees, the county attorney, and the clerk and recorder of the county in which the fire district or fire department is located;

(f) conservancy district audit reports to the board of directors, the department of natural resources and conservation, the district court, and the county attorney(s);

(g) fire department relief association audit reports to the trustees, the city or town attorney, and the respective city or town clerk;

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(h) irrigation district audit reports to the board of commissioners, the district court, and the county attorney(s); *and*

*(i) cemetery district audit reports to the board of cemetery trustees, the district court, and the county attorney.*

(2) All audit reports issued by the department are to be maintained on file at an appropriate location and open to public inspection."

Section 3. Section 2-7-521, MCA, is amended to read:

**"2-7-521. Publication.** (1) Except as provided in subsection (3), after the expiration of the 30-day period provided for in 2-7-515(1), the department shall send a copy of the general comments section of each audit report to a newspaper of general circulation for publication. However, the general comments section of each county audit report shall be sent to the official newspaper of the county for publication.

(2) The publication shall include a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) A publication concerning the audit report of a local government entity within (1)(c) through *(1)(i)* of 2-7-503 is required to contain only the statement provided for in subsection (2) and a statement providing that the audited government entity will send a copy of the audit report to any interested person upon request. A copy of the audit report must be sent to the newspaper publishing the statement.

(4) Publication costs shall be borne by the audited governmental entity."

Section 4. Section 7-35-2121, MCA, is amended to read:

**"7-35-2121. District budget — report.** (1) The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law.

*(2) The budget must be accompanied by a written report of the preceding year, signed by a majority of the members of the board of cemetery trustees and containing:*

*(a) a statement of the activities of the board and of the cemetery district; and*

*(b) an account of the cemetery district's receipts and disbursements.*

*(3)* Insofar as the same can be made applicable, the county budget system, part 23 of chapter 6, shall govern the operation of cemetery districts created under this part."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Section 6. **Termination.** [This act] terminates June 30, 1991.

Approved March 18, 1989.

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# CHAPTER NO. 141

[HB 119]

AN ACT INCREASING THE APPLICATION FEE FOR PERSONALIZED LICENSE PLATES FROM $20 TO $25, AND THE RENEWAL OR TRANSFER FEE FROM $5 TO $10; PROVIDING FOR DISPOSITION OF THE INCREASE INTO THE COUNTY GENERAL FUND; AMENDING SECTION 61-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-406, MCA, is amended to read:

"**61-3-406. Fees for personalized plates — disposition.** *(1)* In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of *$25* for the original personalized license plate and a fee of *$10* for each transfer or renewal thereof.

*(2) The* revenue derived from the fee as provided herein *must* be deposited *as follows:*

*(a) $5 of the application fee and $5 of the transfer or renewal fee in the county general fund; and*

*(b) $20 of the application fee and $5 of the transfer or renewal fee* in the motor vehicle recording account of the state special revenue fund."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Applicability.** [This act] applies to an application for personalized plates after [the effective date of this act].

Approved March 18, 1989.

# CHAPTER NO. 142

[HB 186]

AN ACT TO REVISE THE FISH AND WILDLIFE RESTITUTION LAWS BY SPECIFICALLY PROVIDING FOR FORFEITURE OF BOND OR BAIL; AMENDING SECTIONS 46-9-504, 87-1-111, 87-1-112, AND 87-1-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-9-504, MCA, is amended to read:

"**46-9-504. Procedure on forfeiture — restitution.** (1) Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:

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(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

(2) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. *Except as provided in 87-1-111, whenever* the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined in 46-18-243. If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss. An order to require restitution is a judgment against the defendant and his sureties, and the court may order the restitution to be made by payment of money deposited as bail. Any balance of the bail money must be disposed of in the same manner as provided in subsection (1). Provided no such determination or decision under this subsection shall be admissible as evidence in any other civil action, nor shall it be res judicata in any other civil action."

Section 2. Section 87-1-111, MCA, is amended to read:

**"87-1-111. Restitution for illegal killing or possession of certain wildlife.** *(1)* In addition to other penalties provided by law, a person convicted *or forfeiting bond or bail upon a charge* of the illegal killing or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

*(a)* bighorn sheep, mountain goat, caribou, buffalo, grizzly bear, moose, and endangered species, $1,000;

*(b)* elk, mountain lion, black bear, lynx, and wolverine, $500;

*(c)* deer, antelope, fisher, raptor, swan, bobcat, and pallid and white sturgeon, $300;

*(d)* paddlefish, grayling, and furbearers not listed in subsection (1)*(a)*, *(1)(b)*, or *(1)(c)*, $100;

*(e)* game bird (except swan), $25;

*(f)* game fish, $10.

*(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-504, is not required for an order of restitution under this section.*"

Section 3. Section 87-1-112, MCA, is amended to read:

"**87-1-112. Finding required.** Before restitution may be ordered pursuant to 87-1-111, the finder of fact at trial or the court upon entry of a guilty plea must find that such illegal killing or possession was done knowingly or purposely as defined in 45-2-101. *This finding is not required for state reimbursement under 87-1-111 when bond or bail is forfeited.*"

Section 4. Section 87-1-114, MCA, is amended to read:

"**87-1-114. Disposition of proceeds.** All money collected by a court pursuant to 87-1-111 through 87-1-113 must be remitted to the state treasurer for deposit in the state special revenue fund as provided in 87-1-601(1). *If restitution is ordered out of a forfeited bond or bail, any balance of bond or bail money must be disposed of as provided in 87-1-601(4).*"

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

## CHAPTER NO. 143

[HB 480]

AN ACT CLARIFYING WHEN ITEMS HELD IN ESCROW BY A FINANCIAL ORGANIZATION OR BUSINESS ASSOCIATION MAY BE PRESUMED ABANDONED; AND AMENDING SECTION 70-9-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-9-201, MCA, is amended to read:

"**70-9-201. Property held by banking or financial organization or business association.** The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

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(1) any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has within 5 years:

(a) increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) corresponded in writing with the banking organization concerning the deposit; or

(c) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization;

(2) any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within 5 years:

(a) increased or decreased the amount of the funds or deposit or presented an appropriate record for the crediting of interest or dividends;

(b) corresponded in writing with the financial organization concerning the funds or deposit; or

(c) otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization;

(3) any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and travelers' checks that, with the exception of travelers' checks, has been outstanding for more than 5 years from the date it was payable or from the date of its issuance if payable on demand or, in the case of travelers' checks, that has been outstanding for more than 15 years from the date of its issuance unless the owner has within 5 years or within 15 years in the case of travelers' checks corresponded in writing with the banking or financial organization or business association concerning it or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association;

(4) any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason or any surplus amounts arising from the sale thereof pursuant to law that have been unclaimed by the owner for more than 5 years from the date on which the lease or rental period expired;

*(5) any funds, documents, or other items of personal property, tangible or intangible, held in escrow that have been unclaimed by parties to the escrow agreement for a period of 5 years from the date on which full performance of the instrument held in escrow was to have been completed or for*

*a period of 5 years from the date of the initial defaulted payment in a continuous series of defaulted payments due pursuant to the instrument held in escrow."*

Approved March 18, 1989.

## CHAPTER NO. 144

[HB 624]

AN ACT AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO ERECT SIGNS IDENTIFYING SCENIC LOOP HIGHWAYS; STATING THE PURPOSE OF THE SIGNS; AND AMENDING SECTION 60-2-217, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 60-2-217, MCA, is amended to read:

**"60-2-217. Signs identifying mountain ranges — scenic loop highways — costs — responsibility of department.** *(1)* Subject to the provisions of federal law, the department shall design and erect at relevant locations signs, clearly visible to traffic, identifying:

*(a)* each prominent mountain range that is visible to an occupant of a vehicle traveling on a primary or interstate highway in Montana; *and*

*(b) the junctions with primary or interstate highways in Montana of scenic highways designated under authority of the commission or the department. The signs must mark where the scenic loop leaves and returns to the primary or interstate highway.*

*(2) (a) The department may not pay the cost of the manufacture and erection of the signs provided for in subsection (1)(b) out of funds appropriated to the department.*

*(b) Scenic loop highway signs are intended to provide tourist information, and the department's responsibility for the construction, maintenance, or traffic operation of the highway so signed is not affected by the signs.*

*(c) Erection of scenic loop highway signs does not create a scenic highway."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

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# CHAPTER NO. 145

[HB 429]

AN ACT PERMITTING PERSONAL REPRESENTATIVES AND TRUSTEES TO INVEST FUNDS IN UNITED STATES OBLIGATIONS EITHER DIRECTLY OR IN THE FORM OF SECURITIES OF OR OTHER INTERESTS IN CERTAIN INVESTMENT COMPANIES OR INVESTMENT TRUSTS; AND AMENDING SECTIONS 72-3-613 AND 72-21-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 72-3-613, MCA, is amended to read:

**"72-3-613. Transactions authorized for personal representative.** Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including *money* received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments *that* would be reasonable for use by trustees generally. *If the personal representative is authorized to invest funds in United States obligations, he may invest in these obligations*

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*either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:*

*(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and*

*(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.*

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and himself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obligor or extend, renew, or

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in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; provided, however, *a* personal representative *may not*, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate he represents, nor *may* he be interested in *the* sale. All sales *must* be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of his death:

(a) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;

(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or

(c) throughout the period of administration, if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of his death;

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(26) satisfy and settle claims and distribute the estate as provided in this code."

Section 2. Section 72-21-202, MCA, is amended to read:

**"72-21-202. Powers of trustee.** (1) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act *that* a prudent man would perform for the purposes of the trust, including but not limited to the powers specified in subsection (2).

(2) A trustee has the power, subject to subsection (1) and to 72-21-203:

(a) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested or which is not otherwise a qualified investment;

(b) to receive additions to the assets of the trust from any source;

(c) to continue or participate in the operation of any business or other enterprise and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law. *If the trustee is authorized to invest funds in United States obligations, he may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:*

*(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and*

*(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.*

(f) to deposit trust funds in a bank, including a bank operated by the trustee;

(g) to invest trust funds, including investments, in demand time savings accounts and time certificates of deposit in any bank, including a bank operated by the trustee;

(h) to acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

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(i) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(j) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(k) to enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the trust;

(l) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(m) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(n) to vote a security, in person or by general or limited proxy, and enter into voting trusts;

(o) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(p) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise and retain any property received pursuant thereto;

(q) to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(r) to insure the assets of the trust against damage or loss and the trustee against liability with respect to third persons;

(s) to borrow money from any source to be repaid from trust assets or otherwise; to advance money for the protection of the trust and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(t) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(u) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(v) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income

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for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(w) to pay any property distributable to a beneficiary under disability, without liability to the trustee, to the beneficiary or for use of the beneficiary either to his parent, his guardian, person with whom he resides, or others;

(x) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(y) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties;

(z) to prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties;

(aa) to execute and deliver all instruments *that* will accomplish or facilitate the exercise of the powers vested in the trustee."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

# CHAPTER NO. 146

[HB 392]

AN ACT TO CHANGE THE ANNUAL REGISTRATION DATE FOR MOTOR HOMES AND TRAVEL TRAILERS FROM JANUARY 1 TO MAY 1; AMENDING SECTIONS 61-3-311 AND 61-3-312, MCA; AND PROVIDING A REGISTRATION TRANSITION PROVISION AND PAYMENT CONDITION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Registration of motor homes and travel trailers — July 1 registration date.** (1) All registrations of motor homes and travel trailers expire annually on April 30. Application for registration or reregistration must be made to the county treasurer not later than June 15. If the ownership of a motor home or travel trailer is transferred during the registration year, it must be reregistered and relicensed as provided by statute.

(2) The owner of a motor home or travel trailer registered under the provisions of this section is entitled to operate such vehicle between May 1 and June 15 without displaying the registration certificate of the current registration year if the owner, during that period, displays upon the motor home or travel trailer the number plates, plate, or decal assigned thereto for the previous registration year.

Section 2. Section 61-3-311, MCA, is amended to read:

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"**61-3-311. Time for making application.** Registration must be renewed annually and license fees paid annually. Except as provided in 61-3-313 through 61-3-316 *and [section 1]*, all registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer not later than February 15 of each year. *If the ownership of* a motor vehicle *is transferred* during the registration year, *the* motor vehicle *must* be reregistered and relicensed as provided by statute."

Section 3. Section 61-3-312, MCA, is amended to read:

"**61-3-312. Renewal of registration.** (1) Except as provided in 61-3-314 *and [section 1]*, every vehicle registration under this chapter shall expire on December 31 of each year and *must* be renewed annually upon application and payment of license fees as provided in 61-3-303 and 61-3-321. *The* renewal *takes* effect on January 1 of each year. The certificate of registration *is* valid *only* during the registration year for which issued.

(2) The owner of a vehicle registered under the provisions of this section *is* entitled to operate *the* vehicle between January 1 and February 15 without displaying the registration certificate of the current year, on condition that *the* owner shall, during *the* period, display upon *the* vehicle the number plates or plate assigned for the previous year."

Section 4. **Registration transition — continued use of plates and decals — payment for calendar year on May 1.** (1) All registrations, license plates, and decals issued for motor homes and travel trailers in 1989 do not expire until April 30, 1990.

(2) Fees for motor homes, travel trailers, and campers established in 61-3-522 and 61-3-523 that are due for calendar year 1990 must be paid during the period May 1, 1990, through June 15, 1990.

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

# CHAPTER NO. 147

[HB 212]

AN ACT INCREASING THE MAXIMUM PROPERTY TAX MILL LEVY FOR COUNTY BRIDGES FROM 4 MILLS TO 8 MILLS; DELETING THE PROVISION RELATING TO LINEAR FEET OF BRIDGES IN A COUNTY REQUIRED FOR AN ADDITIONAL MILL LEVY; AMENDING SECTION 7-14-2502, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-14-2502, MCA, is amended to read:

"**7-14-2502. Special bridge tax authorized.** (1) Each board may levy a special tax not to exceed *8* mills on all taxable property in the

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county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the taxable value of property in that county is $20 million or less, the board may, if necessary, levy 1 mill.

(b) In counties where the taxable value of property in that county is not less than $20 million or more than $40 million, the board may, if necessary, levy 2 mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved March 18, 1989.

# CHAPTER NO. 148

[HB 223]

AN ACT ALLOWING DEMONSTRATOR MOTOR VEHICLES TO DISPLAY ONLY ONE LICENSE PLATE; AMENDING SECTION 61-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-301, MCA, is amended to read:

**"61-3-301. Registration — license plate required — display.** (1) Except as otherwise provided *in this chapter*, no person *may* operate a motor vehicle upon the public highways of *Montana* unless *the* vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that trailers, semitrailers, quadricycles, motorcycles, *and vehicles authorized in 61-4-102(6) to display demonstrator plates may* have but one number plate conspicuously displayed on the rear. No person *may* display on *a* vehicle at the same time *a* number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in part 5, chapter 10, Title 75, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) No person *may* purchase or display on a vehicle *a* license plate bearing the number assigned to any county as provided in 61-3-332 other than

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the county of his permanent residence at the time of application for registration. However, the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application *for the license* in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate so issued bearing the number assigned to *that* county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, or to repaint old license plates to resemble current license plates.

(4) Any person violating these provisions is guilty of a misdemeanor and subject to the penalty *prescribed* in 61-3-601."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective January 1, 1990.

Approved March 18, 1989.

# CHAPTER NO. 149

[HB 417]

AN ACT AUTHORIZING A TOUR BOAT ENDORSEMENT TO A RESORT ALL-BEVERAGES LICENSE; ESTABLISHING CONDITIONS FOR ISSUING THE ENDORSEMENT AND FOR THE SALE OF ALCOHOLIC BEVERAGES PURSUANT TO THE ENDORSEMENT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Resort license — tour boat endorsement.** (1) A holder of a resort all-beverages license issued under 16-4-202 may be issued a tour boat endorsement to allow the sale of alcoholic beverages to passengers on boats at least 40 feet in length and equipped to carry at least 50 passengers.

(2) The endorsement must be issued upon written application to the department and submission of an annual fee of $200. The applicant must also submit proof:

(a) of compliance with the following requirements:

(i) county health department inspection and approval of food services offered on the boat;

(ii) inspection and approval by the department of fish, wildlife, and parks of boat safety equipment requirements;

(iii) current boat registration; and

(iv) business liability insurance coverage; and

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(b) that the registered owner of the tour boat is:

(i) a resort all-beverages licensee;

(ii) an individual named on a resort all-beverages license; or

(iii) a stockholder owning 10% or more of any class of stock in a corporate resort all-beverages license.

(3) Alcoholic beverages may be sold pursuant to the endorsement authorized in subsection (1) only while the boat is underway within 30 miles of the resort boundary or is in preparation for scheduled departure. Except as provided in this subsection, no alcoholic beverages may be sold or served when the boat is secured at its or any other mooring.

(4) Sale of alcoholic beverages under the endorsement is subject to all other requirements imposed for any all-beverages license issued under this part.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 2, and the provisions of Title 16 apply to [section 1].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

# CHAPTER NO. 150

[HB 297]

AN ACT ALLOWING THE DISPLAY ON A COLLECTOR'S ITEM MOTOR VEHICLE OF A LICENSE PLATE FOR THE YEAR THE VEHICLE WAS MANUFACTURED; REQUIRING INSPECTION OF THE LICENSE PLATE AND PAYMENT OF FEES; PROVIDING FOR A VALIDATING DECAL; AMENDING SECTION 61-3-411, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-411, MCA, is amended to read:

**"61-3-411. Registration of a motor vehicle owned and operated solely as a collector's item.** (1) An owner of a motor vehicle more than 30 years old, used solely as a *collector's* item and not for general transportation purposes, may file with the department an application for the registration of the motor vehicle. *The application must be sworn to before an officer authorized to administer oaths. The application must state:*

*(a)* the name and address of the owner;

*(b)* the name and address of the person from whom purchased;

*(c)* the make, the gross weight, the year and number of the model, and the manufacturer's identification number and serial number *of the motor vehicle;* and

*(d)* that the vehicle is owned and operated solely as a *collector's* item and not for general transportation purposes.

(2) The registration fee for *a* motor *vehicle registered under subsection (1) is:*

*(a) for a vehicle* weighing 2,850 pounds or less, $5; and

*(b) for a vehicle* weighing more than 2,850 pounds, $10.

(3) Upon receipt of the application for registration and payment of the registration fee, the department shall file the application and register the motor vehicle therein described in the manner specified in 61-3-101 and, *unless the applicant chooses to exercise the option allowed in [section 2],* shall deliver to the applicant:

(a) for *a* motor *vehicle* manufactured in 1933 or earlier, two license plates bearing the inscription "Pioneer—Montana" and the registration number; or

(b) for *a* motor *vehicle* manufactured in 1934 or later and more than 30 years old, two license plates bearing the inscription "Vintage—Montana" and the registration number.

(4) The year of issuance *may* not be shown on the plates.

(5) Annual renewal of the registration of *a* motor vehicle *registered under this section* is not required, and the registration is valid as long as the vehicle is in existence; provided, however, that upon sale of *the* motor vehicle, the purchaser *shall* renew the registration and pay the license fees *provided in subsection (2)."*

Section 2. **Display of original Montana license plates on collector's item vehicle — definition — validation.** (1) As used in this section, "original Montana license plate" means a license plate issued according to the provisions of 61-3-331; section 53-116, R.C.M. 1947; section 1759.1, R.C.M. 1935; or section 1759, R.C.M. 1921; whichever section was effective during the year of the manufacture of the motor vehicle on which the license plate is authorized to be displayed.

(2) Notwithstanding the provisions of 61-3-332, the department shall authorize the owner of a motor vehicle registered as provided in 61-3-411 to display original Montana license plates, with validation as required in subsection (3), after:

(a) payment of the fee required in subsection (5);

(b) inspection by a highway patrolman of the original Montana license plate to be displayed on the motor vehicle and, upon payment of a $5 fee, receipt of the highway patrolman's certification that he has determined the license plate is legible and meets the requirements of subsection (1); and

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(c) receipt of an application by the owner of the motor vehicle as provided for in 61-3-411.

(3) If the owner of a vehicle registered under the provisions of 61-3-314 meets the requirements of subsection (2), the department shall:

(a) file the application and register information on the motor vehicle in the manner prescribed in 61-3-101; and

(b) issue a validating decal inscribed with:

(i) a unique number; and

(ii) the letter:

(A) "P" to designate vehicles described in 61-3-411(3)(a); or

(B) "V" to designate vehicles described in 61-3-411(3)(b).

(4) The owner of the motor vehicle shall permanently affix the validating decal to the windshield of the collector's item motor vehicle or, if no windshield exists, to another prominent and visible position on the vehicle.

(5) The owner of the motor vehicle shall pay to the department with the application required under [this section] a one-time special collector's item motor vehicle license fee of $20.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act],

Section 4. **Applicability.** [Sections 1 through 3] apply to motor vehicle registrations occurring after December 31, 1989.

Section 5. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 2].

Approved March 18, 1989.

# CHAPTER NO. 151

[HB 74]

AN ACT TO ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO MAINTAIN POSITIVE CASH BALANCES IN OTHER SPECIAL REVENUE FUNDS IF FUNDS FROM OTHER SOURCES ARE OUTSTANDING; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-2-107, MCA, is amended to read:

**"17-2-107. Accurate accounting records and interaccount loans.** (1) The department of administration shall record receipts and disbursements for treasury funds and for accounts within treasury funds and shall

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maintain records in such a manner as to reflect the total cash and invested balance of each fund and each account. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money do not result in inflation of figures reflecting total governmental costs and revenues.

(2) When the expenditure of an appropriation is necessary and the cash balance in the account from which the appropriation was made is insufficient, the department of administration may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income will be sufficient to restore the amount so transferred within 1 calendar year and provided the loan is recorded in the state accounting records. The loan must be repaid within 1 calendar year of the date the loan is approved unless it is extended under subsection (3) or by specific legislative authorization. No account shall be so impaired that all proper demands thereon cannot be met even if the loan is extended.

(3) Under unusual circumstances the director of the department of administration may grant one extension of a loan for up to 1 year. The department of administration shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the general fund or the current unrestricted subfund to funds designated in subsections (1)(d)(i)(C), (1)(d)(i)(D), and (1)(d)(ii) through (1)(d)(vi) of 17-2-102 shall bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student activity fees used to support student governments at units of the university system, are credited to the state general fund.

(5) No accounting entity may have a negative cash balance at fiscal yearend. The department of administration may, however, allow any entity to carry a negative balance at any point during the fiscal year subject to the following restrictions:

(a) Accounting entity negative cash balances may not exist more than 7 working days in the funds provided in subsections (1)(a) through (1)(c) of 17-2-102.

(b) Units of the university system and vocational-technical centers must maintain positive cash balances in the subfunds provided in subsections (1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) of 17-2-102.

(6) Notwithstanding the provisions of subsections (2) through (4), the department of social and rehabilitation services may maintain positive cash balances in the federal *and other* special revenue *funds* with long-term repayment whenever necessary due to the timing for transmittal of obligated matching funds if it can be demonstrated to the satisfaction of the

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department of administration that the total loan balance does not exceed total receivables from federal and county governments and receivables have been billed on a timely basis. The loan must be repaid under such terms and conditions as may be determined by the department of administration or by specific legislative authorization."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Coordination instruction.** If Senate Bill No. 80 is passed and approved to eliminate the other special revenue funds category, then the language "and other" inserted in 17-2-107 is deleted and the language "and state" is inserted in 17-2-107 in place of the language "and other".

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1989.

# CHAPTER NO. 152

[SB 124]

AN ACT PROHIBITING A HEALTH CARE FACILITY FROM REFUSING TO ADMIT A PERSON TO THE FACILITY SOLELY BECAUSE THAT PERSON HAS AIDS OR ANY OTHER HIV-RELATED CONDITION; AND AMENDING SECTION 50-5-105, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-5-105, MCA, is amended to read:

**"50-5-105. Discrimination prohibited.** (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

*(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.*

*(b) For the purposes of this subsection (2) the following definitions apply:*

*(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.*

*(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.*

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*(3) A* person who operates a facility may *not* discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

# CHAPTER NO. 153

[SB 188]

AN ACT AUTHORIZING THE SECRETARY OF STATE TO PRESCRIBE A COMPUTERIZED FORMAT FOR ANNUAL REPORTS OF CORPORATIONS; AND AMENDING SECTIONS 35-1-1101, 35-2-901, AND 35-3-209, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 35-1-1101, MCA, is amended to read:

**"35-1-1101. Annual report of domestic and foreign corporations.** (1) Each domestic corporation and each foreign corporation authorized to transact business in *Montana* shall file, within the time prescribed by this chapter, an annual report *stating*:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in *Montana* and the name of its registered agent in *Montana* at *that* address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) *briefly* the character of the business in which the corporation is actually engaged in *Montana*;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class; and

(f) the aggregate number of issued shares, itemized by class and series, if any, within each class.

(2) *Each* foreign corporation shall *also* include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within *Montana* and a statement, expressed in dollars, of the gross amount of

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business transacted by the corporation for the 12 months ended on December 31 preceding the date provided *in this section* for the filing of *the* report and the gross amount thereof transacted by the corporation at or from places of business in *Montana*. If on December 31 preceding the time provided *in this section* for the filing of *the* report the corporation had not been authorized to transact business in *Montana* for 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in *Montana* and December 31. If all the property of the corporation is located in *Montana* and all of its business is transacted at or from places of business in *Montana*, the information required by this subsection need not be *reported*.

(3) *The* annual report must be on forms *or in a computerized format* prescribed by the secretary of state, *and the* information therein contained must be given as of the date of the execution of the report, *which* must be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation by *the* receiver or trustee."

Section 2. Section 35-2-901, MCA, is amended to read:

**"35-2-901. Annual report of domestic and foreign corporations.** (1) Each domestic corporation and each foreign corporation authorized to conduct affairs in *Montana* shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in *Montana* and the name of its registered agent in *Montana* at *that* address and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the affairs which the corporation is actually conducting or, in the case of a foreign corporation, which the corporation is actually conducting in this state;

(d) the names and respective addresses of the directors and officers of the corporation.

(2) *The* annual report *must* be made on forms *or in a computerized format* prescribed by the secretary of state, and the information contained *in the report must* be given as of the date of the execution of the report. It *must* be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, or if the corporation is in the hands of a receiver or trustee, it *must* be executed on behalf of the corporation by *the* receiver or trustee."

Section 3. Section 35-3-209, MCA, is amended to read:

**"35-3-209. Annual report.** (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act, an annual report *on*

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*forms or in a computerized format prescribed by the secretary of state,* setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the address of the registered office of the corporation in *Montana* and the name of its registered agent in *Montana* at *that* address;

(c) the names and respective addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report *must* be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by *the* chief corporate officer."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 18, 1989.

# CHAPTER NO. 154

[SB 391]

AN ACT PROVIDING FOR STAGGERED TERMS FOR CERTAIN MEMBERS OF THE BOARD OF PARDONS; AMENDING SECTION 2-15-2302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-2302, MCA, is amended to read:

**"2-15-2302. Board of pardons — composition — allocation — quasi-judicial.** (1) There is a board of pardons.

(2) The board consists of three members and an auxiliary member, at least one of whom shall have particular knowledge of Indian culture and problems. Members of the board, including the auxiliary member, shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed may be substituted for these educational requirements.

(3) The auxiliary member shall attend any meeting that a regular board member is unable to attend, and at that time the auxiliary member has all the rights and responsibilities of a regular board member.

*(4) One member and the auxiliary member shall serve terms concurrent with the governor. The remaining members shall serve staggered 4-year terms.*

*(5)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

*(6)* The board, including the auxiliary member, is designated as a quasi-judicial board for purposes of 2-15-124, except board members shall be compensated as provided by legislative appropriation *and the terms of board members shall be staggered as provided in subsection (4).*"

Section 2. **Implementation of staggered terms.** (1) To implement the staggered-term system provided for in 2-15-2302(4), the first terms of the successors to the three members whose terms expire January 2, 1989, are as follows:

(a) one member and the auxiliary member shall serve 4-year terms; and

(b) one member shall serve a 3-year term.

(2) Upon expiration of the terms provided in subsection (1), each member shall serve a 4-year term.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Section 4. **Applicability.** [Section 2] applies retroactively, within the meaning of 1-2-109, to the members of the board of pardons appointed after January 2, 1988.

Approved March 18, 1989.

# CHAPTER NO. 155

[HB 402]

AN ACT TO CONTINUE FUNDING FOR THE STATEWIDE GENETICS PROGRAM; TO INCREASE THE FEE ON HEALTH INSURERS; TO APPROPRIATE MONEY FOR THE PROGRAM; AMENDING SECTION 33-2-712, MCA, AND SECTION 7, CHAPTER 554, LAWS OF 1987; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-2-712, MCA, is amended to read:

"**33-2-712. (Temporary) Genetics program fee.** Except as provided in 33-2-713, for each Montana resident insured under any individual or group disability or health insurance policy on February 1 of each year, the insurer or health service corporation issuing the policy, and the state group health plan provided for in Title 2, chapter 18, part 8, shall pay *45* cents to the commissioner. The fee must be paid on or before March 1 of each year and be deposited in the general fund. The purpose of the fee is to fund the voluntary statewide genetics program established in 50-19-211."

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Section 2. Section 7, Chapter 554, Laws of 1987, is amended to read:

"Section 7. **Termination.** This act terminates on June 30, *1991*."

Section 3. **Appropriation.** There is appropriated from the general fund to the department of health and environmental sciences $688,300 for the biennium ending June 30, 1991, for the purpose of operating the voluntary statewide genetics program established in 50-19-211.

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date — termination.** (1) [This act] is effective July 1, 1989.

(2) [This act] terminates June 30, 1991.

Approved March 18, 1989.

# CHAPTER NO. 156

[HB 262]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO CREDIT LIFE AND CREDIT DISABILITY INSURANCE; AND AMENDING SECTIONS 33-1-501, 33-21-102 THROUGH 33-21-105, 33-21-113, AND 33-21-201 THROUGH 33-21-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-1-501, MCA, is amended to read:

**"33-1-501. Filing and approval of forms.** (1) No insurance policy or annuity contract form, application form, printed rider or endorsement form, or form of renewal certificate *may* be delivered or issued for delivery in *Montana* unless the form has been filed with and approved by the commissioner and *the regulatory official of* the state of domicile of the insurer, *if* required. This provision *does* not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or *that* relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to forms for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages, the filing required by this subsection may be made by a rating organization on behalf of its members and subscribers, but this provision *does* not prohibit *a* member or subscriber from filing *a form* on its own behalf.

(2) *The* filing *must* be made not less than 60 days in advance of delivery. Approval of *a* form by the commissioner *constitutes* a waiver of any unexpired portion of *the* waiting period. The commissioner may extend by

not more than an additional 60 days the period within which he may approve or disapprove *a* form by giving notice of *the* extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) *An* order of the commissioner disapproving *a* form or withdrawing a previous approval *must* state the grounds *for disapproval or withdrawal* in *sufficient detail* to inform the insurer.

(4) The commissioner may by order exempt from the requirements of this section for so long as he *considers* proper *an* insurance document, form, or type *of document or form* specified in *the* order to which, in his opinion, this section may not practicably be applied or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(5) This section *applies* to *a* form used by *a* domestic *insurer* for delivery in a jurisdiction outside *Montana* if the insurance supervisory official of *the* jurisdiction informs the commissioner that *the* form is not subject to approval or disapproval by *the* official and upon the commissioner's order requiring the form to be submitted to him for the purpose. The same standards apply to *these* forms as apply to forms for domestic use.

(6) This section and 33-1-502 *do* not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in *Montana* or delivered in *Montana*, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) *Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for* group insurance policies effectuated and delivered outside *Montana* but covering persons resident in *Montana must* be filed with the commissioner upon his request."

Section 2. Section 33-21-102, MCA, is amended to read:

**"33-21-102. Purpose and scope.** (1) The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. The provisions of this chapter shall be liberally construed.

(2) *Except as provided in subsection (3), this chapter applies to each policy, certificate of insurance, notice of proposed insurance, binder, endorsement, and rider of* life insurance and disability insurance *delivered or issued for delivery in Montana* in connection with loans or other credit transactions *for personal, family, or household purposes.*

*(3) This chapter does not apply to life insurance or disability insurance delivered or issued for delivery* in connection with*:*

*(a)* a loan or other credit transaction of more than 15 years' duration*;*

*(b) a credit transaction that is:*

*(i) secured by a first mortgage or deed of trust; and*

*(ii) made to finance the purchase of real property or the construction of a dwelling thereon or to refinance a prior credit transaction made for that purpose; or*

*(c) a credit transaction that is an isolated transaction on the part of the insurer and that is not related to an agreement or a plan for insuring debtors of the creditor."*

Section 3. Section 33-21-103, MCA, is amended to read:

**"33-21-103. Definitions.** *As used in* this chapter, the following definitions apply:

(1) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

(3) "Creditor" means:

*(a)* a lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction;

*(b)* any successor to the right, title, or interest of a lender, vendor, or lessor;

*(c) an affiliate, associate, or subsidiary of a lender, vendor, or lessor;*

*(d) a director, officer, or employee of a lender, vendor, or lessor; or*

*(e) any other person in any way associated with a lender, vendor, or lessor.*

*(4) "Credit transaction" means a transaction by the terms of which, at a future date:*

*(a) repayment of money loaned is made;*

*(b) a loan commitment is made; or*

*(c) payment for goods, services, or property sold or leased is made.*

*(5)* "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

*(6)* "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

*(7) "Open-end credit" means credit extended by a creditor under an agreement in which:*

*(a) the creditor reasonably contemplates repeated transactions;*

*(b) the creditor imposes a finance charge from time to time on an outstanding unpaid balance; and*

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*(c) the amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.*"

Section 4. Section 33-21-104, MCA, is amended to read:

"**33-21-104. Existing insurance — choice of insurer.** When credit life insurance or credit disability insurance is required as additional security for *an* indebtedness, the debtor, upon request to the creditor, *has* the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through *an* insurer authorized to transact insurance within *Montana*."

Section 5. Section 33-21-105, MCA, is amended to read:

"**33-21-105. Claims.** (1) *A claim must* be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. *A claim must* be settled as soon as possible and in accordance with the terms of the insurance contract.

(2) *A claim must* be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions or upon direction of *the* claimant to one specified.

(3) No plan or arrangement *may* be used whereby *a* person, *partnership*, or corporation other than the insurer or its designated claim representative *is* authorized to settle or adjust claims. The creditor *may* not be designated as claim representative for the insurer in adjusting claims, except that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer."

Section 6. Section 33-21-113, MCA, is amended to read:

"**33-21-113. Penalties.** In addition to any penalty provided by law, *a* person who violates an order of the commissioner after it has become final and while *the* order is in effect shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the state of Montana a sum not to exceed $250 which may be recovered in a civil action, except that if *the* violation is found to be willful, the amount of *the* penalty *is* a sum not to exceed $1,000. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of the person, *partnership, or corporation* guilty of such violation. *The* order for suspension or revocation *is* subject to judicial review as provided in 33-1-711."

Section 7. Section 33-21-201, MCA, is amended to read:

"**33-21-201. Form of issuance.** *An insurer may deliver or issue for delivery credit* life insurance and credit disability insurance only in the following forms:

(1) individual policies of life insurance issued to debtors on *a* term plan;

(2) individual policies of disability insurance issued to debtors on a term plan or disability *benefit* provisions in individual policies *of credit life insurance*;

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(3) group policies of life insurance issued to creditors providing insurance upon the lives of debtors on *a* term plan;

(4) group policies of disability insurance issued to creditors on a term plan insuring debtors or disability provisions in group *credit* life *insurance* policies to provide such coverage."

Section 8. Section 33-21-202, MCA, is amended to read:

**"33-21-202. Amount.** (1) The *initial* amount of credit life insurance *may not exceed the total amount repayable under the contract of* indebtedness. *If an* indebtedness *is* repayable in substantially equal installments, *the amount* of credit life insurance *may* not exceed the *scheduled or actual amount of* unpaid indebtedness on the date of death, *whichever is greater. The amount of credit life insurance written in connection with:*

*(a) a credit transaction repayable over a term in excess of 63 months or, at the option of the insurer, for a shorter term may not exceed the actual amount of unpaid indebtedness on the date of death, excluding any:*

*(i) unearned interest or finance charges; and*

*(ii) delinquency or extension exceeding 4 months;*

*(b) an open-end credit agreement having a credit limit exceeding $10,000 may not exceed the plan's credit limit;*

*(c) an* agricultural *loan commitment* not exceeding 1 year may *not exceed* the amount of the loan commitment on a nondecreasing or level term plan; *and*

*(d) an education loan commitment may be for the amount of the portion of the commitment that has not been advanced by the creditor.*

(2) The amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, *may not exceed:*

*(a)* the aggregate of the periodic scheduled unpaid installments of indebtedness; and

*(b)* the original indebtedness divided by the number of periodic installments."

Section 9. Section 33-21-203, MCA, is amended to read:

**"33-21-203. Term.** *(1)* The term of any credit life insurance or credit disability insurance *commences*, subject to acceptance by the insurer, on the date *on which* the debtor becomes obligated to the creditor. *However, if* a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to *the* indebtedness *commences* on the effective date of the policy.

*(2) When evidence of insurability is required and the evidence is furnished more than 30 days after the date on which the debtor becomes obligated to the creditor, the term of the insurance may commence on the date the insurer determines the evidence is satisfactory. In that event, the insurer shall make an appropriate refund or adjustment of any charge to the debtor for insurance.*

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*(3)* The term of *the* insurance *may* not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor, *but the term of the insurance may be less than the term of the credit transaction to provide modified or partial coverage or extend beyond the maturity date to provide coverage consistent with 33-21-202(1)(a).*

*(4)* If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force *must* be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund *must* be paid or credited as provided in 33-21-206."

Section 10. Section 33-21-204, MCA, is amended to read:

**"33-21-204. Policy or certificate delivered — time of delivery — provisions.** (1) All credit life insurance and credit disability insurance sold *must* be evidenced by an individual policy or, in the case of group insurance, by a certificate of insurance, which individual policy or group certificate of insurance *must* be delivered to the debtor at the time the indebtedness is incurred except as hereinafter provided.

(2) If the individual policy or group certificate of insurance is not delivered to the debtor at the time the indebtedness is incurred, a copy of the application for *the* policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name of *each* debtor, the *premium or* amount of payment, *if any,* by the debtor separately in connection with credit life insurance and credit disability insurance coverage, *the amount, term,* and a brief description of the coverage provided or to be provided, *must* be delivered to the debtor at the time such indebtedness is incurred. The copy of the application for or notice of proposed insurance *must also* refer exclusively to insurance coverage and *must* be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement unless the information required by this section is prominently set forth therein. Upon approval *by the insurer* of the application *for insurance* or acceptance of the insurance *by the insurer* and within 30 days of the date upon which the indebtedness is incurred, the insurer shall *deliver* the individual policy or group certificate of insurance to the debtor. The application or notice of proposed insurance *must* state that, upon acceptance by the insurer, the insurance *becomes* effective as of the date the indebtedness is incurred. *If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged. If the amount of premium is less than that set forth in the notice of proposed insurance, the insurer shall make an appropriate refund.*

(3) Each individual policy or group certificate of credit life insurance and credit disability insurance *must,* in addition to other requirements of law, set forth the name and home office address of the insurer, *the name of each debtor or, in the case of a group certificate of insurance,* the identity by name or otherwise of the *debtor,* the rate or amount of payment, if any, by the debtor separately in connection with credit life insurance and credit disability insurance, a description of the coverages, including *the*

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*amount and term thereof and* any exceptions, limitations, or restrictions, and *must* state that the benefits *must* be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess *must* be payable to a beneficiary, other than the creditor, named by the debtor or to his estate. *If the term of the insurance is less than the term of the loan, that fact must be stated on the face of the individual policy or group certificate in not less than 10-point boldface type.*

*(4) For the purposes of subsections (1) and (2), an individual policy or group certificate of insurance delivered in connection with an open-end credit agreement is considered to be delivered at the time the indebtedness is incurred if delivery occurs on or before the date the indebtedness is incurred."*

Section 11. Section 33-21-205, MCA, is amended to read:

**"33-21-205. Filing, approval, and withdrawal of forms and rates — disapproval.** (1) *With respect to credit life insurance or credit disability insurance:*

*(a) a policy, certificate* of insurance, *notice* of proposed insurance, *application* for insurance, *binder, endorsement, or rider may not be delivered or issued for delivery in Montana unless it has been* filed with *and approved by* the *commissioner, in accordance with 33-1-501, and the regulatory official* of the state in which *it* is issued*; and*

*(b) a schedule of premium rates pertaining to a policy, certificate of insurance, notice of proposed insurance, application for insurance, binder, endorsement, or rider may not be used in Montana unless it has been filed with the commissioner.*

(2) *With respect to credit life insurance or credit disability insurance and in accordance with 33-1-501, the* commissioner may *disapprove a policy, certificate* of insurance, *notice* of proposed insurance, *application* for insurance, *binder, endorsement, or rider:*

*(a) for a reason listed in 33-1-502;*

*(b)* if the table of premium rates charged or to be charged appears by reasonable assumptions to be excessive in relation to benefits*;* or

*(c)* if it contains provisions *that* are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of *the insurance.*

(3) If the commissioner notifies the insurer that *a* form *is disapproved,* it is unlawful for *the* insurer to issue or use *the* form.

*(4) An insurer may not issue or use a form after the commissioner withdraws approval of the form pursuant to 33-1-501. An* order or final determination of the commissioner under this section *is* subject to judicial review."

Section 12. Section 33-21-206, MCA, is amended to read:

**"33-21-206. Premiums and refunds.** (1) Each insurer issuing credit life insurance or credit disability insurance shall file with the commissioner

its schedules of premium rates for use in connection with such insurance. Any insurer may revise *the* schedules from time to time and shall file *the* revised schedules with the commissioner. No insurer *may* issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner. The commissioner may require the filing of the schedule of premium rates for use in connection with and as a part of the specific policy filings as provided by 33-21-205.

(2) Each individual policy, group certificate *of insurance*, or notice of proposed insurance of credit life insurance and credit disability insurance *must* provide that, *if* the insurance *is terminated before* the scheduled maturity date of the indebtedness, any refund of premium *or amount paid by the debtor for insurance must* be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing refunds *must* be filed with *and approved by* the commissioner.

(3) If a creditor requires a debtor to make a payment in connection with credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to *the* debtor and shall promptly make an appropriate credit to the account.

(4) The amount charged to a debtor for any credit life *insurance* or credit disability insurance *may* not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

*(5) Nothing in this chapter may be construed to authorize any payments for insurance prohibited under a statute, or rule thereunder, governing credit transactions.*"

Section 13. Section 33-21-207, MCA, is amended to read:

"**33-21-207. Issuance of policies.** *Each policy, certificate of insurance, or notice of proposed insurance* of credit life insurance and credit disability insurance *must* be delivered or issued for delivery in *Montana* only by an insurer authorized to *transact* insurance *in Montana* and *must, except as provided in 33-17-103,* be issued only through *a licensed insurance agent.*"

Section 14. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 18, 1989.

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# CHAPTER NO. 157

[HB 405]

AN ACT TO PROVIDE THAT A WAREHOUSEMAN OR COMMODITY DEALER MAY ESTABLISH LICENSING ELIGIBILITY BY PROVIDING THE DEPARTMENT OF AGRICULTURE WITH ADDITIONAL BONDING OR ITS EQUIVALENT IF CURRENT ASSETS DO NOT EQUAL OR EXCEED CURRENT LIABILITIES; AMENDING SECTIONS 80-4-502 AND 80-4-601, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-4-502, MCA, is amended to read:

**"80-4-502. Licenses to warehouseman — issuance — renewal — conditions precedent.** (1) The department is authorized to issue or renew, upon application, a license to any warehouseman for the conduct of a warehouse or warehouses in accordance with parts 5 and 6 of this chapter, provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouseman. The insurance shall insure the commodities for the full market value at the time of loss of such commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored therein.

(c) A license fee must be submitted to the department as prescribed by 80-4-503.

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by 80-4-504 and 80-4-505.

(f) The applicant has submitted to the department a current financial statement prepared by a licensed accountant according to generally accepted accounting principles, showing that the applicant has and does maintain current assets equal to or greater than current liabilities. *Applicants not having adequate current assets equal to or greater than current liabilities may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of $2,000 for each $1,000 of deficit. The bond or equivalent must be in addition to the bond amount required in 80-4-505.*

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

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(h) The applicant must have complied with the terms of this part and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of $50 if the documents are filed within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to 80-4-503."

Section 2. Section 80-4-601, MCA, is amended to read:

**"80-4-601. Commodity dealer license requirements — financial responsibility.** (1) A person may not engage in the business of a commodity dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3) A license application must include the following:

(a) the name of the applicant;

(b) the names of the officers and directors if the applicant is a corporation;

(c) the names of the partners if the applicant is a partnership;

(d) the location of the principal places of business;

(e) a sufficient and valid bond as specified in 80-4-604;

(f) the number and description of trucks or tractor-trailer units owned or leased by the applicant that will be used in the transportation of agricultural commodities purchased pursuant to the provisions of this part;

(g) a complete financial statement prepared by a licensed accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and net worth. The commodity dealer shall have and maintain current assets equal to or greater than current liabilities. *Applicants not having adequate current assets equal to or greater than current liabilities may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of $2,000 for each $1,000 of deficit. The bond or equivalent must be in addition to the bond amount required in 80-4-604.*

(h) any other reasonable information the department finds necessary to carry out the provisions and purpose of this part.

(4) In order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain net assets of at least $50,000 or maintain a bond in the amount of $2,000 for each $1,000 or fraction thereof of net assets deficiency. However, a minimum of $10,000 net assets

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is required by a commodity dealer to qualify for a license. *Assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal. In determining total net assets, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. The insurance must be in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.* A bond submitted for purposes of this subsection is in addition to any bond otherwise required under this part.

(5) The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

# CHAPTER NO. 158

[SB 157]

AN ACT CREATING A STATUTE OF LIMITATIONS FOR CIVIL ACTIONS TO RECOVER DAMAGES FOR INJURY SUFFERED AS A RESULT OF CHILDHOOD SEXUAL ABUSE; AMENDING SECTION 27-2-204, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-2-204, MCA, is amended to read:

**"27-2-204. Tort actions — general and personal injury.** (1) *Except as provided in [section 2], the* period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

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Section 2. **Tort actions — childhood sexual abuse.** (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of childhood sexual abuse.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

(4) The provisions of 27-2-401 apply to this section.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 27, chapter 2, part 2, and the provisions of Title 27, chapter 2, part 2, apply to [section 2].

Section 4. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Retroactive applicability.** [This act] applies to all causes of action commenced on or after October 1, 1989, regardless of when the cause of action arose. To this extent, [this act] applies retroactively, within the meaning of 1-2-109.

Approved March 20, 1989.

# CHAPTER NO. 159

[SB 85]

AN ACT TO EXTEND THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-5-205, MCA, is amended to read:

"**17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, as hereby amended, is extended to bonds issued and proceedings taken prior to *[the effective date of this act]*."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

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# CHAPTER NO. 160

[SB 222]

AN ACT EXTENDING THE PROVISIONS FOR PASSING OF TITLE TO CATTLE RELEASED FROM AN AUCTION YARD; AND AMENDING SECTION 30-2-401, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-2-401, MCA, is amended to read:

**"30-2-401. Passing of title — reservation for security — limited application of this section.** Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (30-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) For transactions involving interstate shipment of cattle *or cattle being released from auction yards for interstate shipment* the seller may

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issue a regular title or bill of sale, or give a conditional transfer of title or bill of sale. The conditional transfer of title or bill of sale is fully validated and the title passes when the following conditions are met:

(a) the bank on which the buyer's warrant, check, or draft was drawn, notifies the seller, or his designated bank, that the instrument of payment has cleared the bank for payment, and

(b) a copy of the notification from the buyer's bank is attached to the conditional transfer of title or bill of sale.

(5) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale"."

Approved March 20, 1989.

# CHAPTER NO. 161

[HB 33]

AN ACT ALLOWING A WORKERS' COMPENSATION IMPAIRMENT EVALUATOR TO BE A CHIROPRACTOR IF THE CLAIMANT'S TREATING PHYSICIAN IS A CHIROPRACTOR; AND AMENDING SECTIONS 37-12-201 AND 39-71-711, MCA.

STATEMENT OF INTENT

This bill authorizes the board of chiropractors to adopt a rule for the certification of impairment evaluators within their profession. The board should consider the applicant's experience in treating industrial accidents and any academic training he may have in using the impairment rating guides recognized by the division of workers' compensation.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-12-201, MCA, is amended to read:

**"37-12-201. Organization of board — meetings — powers and duties.** (1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. A majority of the board constitutes a quorum.

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal which shall be affixed to licenses issued;

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(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, and disciplinary standards for licensees;

(e) investigate complaints;

(f) make determinations of the qualifications of applicants under this chapter;

(g) administer the examination for licensure under this chapter;

(h) collect fees and charges prescribed in this chapter;

(i) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; *and*

*(j) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.*

(4) The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection."

Section 2. Section 39-71-711, MCA, is amended to read:

**"39-71-711. Impairment evaluation — ratings.** (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American Medical Association; and

(c) must be expressed as a percentage of the whole person.

(2) A claimant or insurer, or both, may obtain an impairment rating from *a medical doctor or from a chiropractor if the claimant's treating physician is a chiropractor.* If the claimant and insurer cannot agree upon the rating, the procedure in subsection (3) must be followed.

(3) (a) Upon request of the claimant or insurer, the division shall direct the claimant to an evaluator for a rating. The evaluator shall:

(i) evaluate the claimant to determine the degree of impairment, if any, that exists due to the injury; and

(ii) submit a report to the division, the claimant, and the insurer.

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(b) Unless the following procedure is followed, the insurer shall begin paying the impairment award, if any, within 30 days of the evaluator's mailing of the report:

(i) Either the claimant or the insurer, within 15 days after the date of mailing of the report by the first evaluator, may request that the claimant be evaluated by a second evaluator. If a second evaluation is requested, the division shall direct the claimant to a second evaluator, who shall determine the degree of impairment, if any, that exists due to the injury.

(ii) The reports of both examinations must be submitted to a third evaluator, who may also examine the claimant or seek other consultation. The three evaluators shall consult with one another, and then the third evaluator shall submit a final report to the division, the claimant, and the insurer. The final report must state the degree of impairment, if any, that exists due to the injury.

(iii) Unless either party disputes the rating in the final report as provided in subsection (6), the insurer shall begin paying the impairment award, if any, within 45 days of the date of mailing of the report by the third evaluator.

(4) The division shall appoint impairment evaluators to render ratings under subsection (1). The division shall adopt rules that set forth the qualifications of evaluators and the locations of examinations. An evaluator must be a physician licensed under Title 37, chapter 3, *except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.* The division may seek nominations from the board of medical examiners *for evaluators licensed under Title 37, chapter 3, and from the board of chiropractors for evaluators licensed under Title 37, chapter 12.*

(5) The cost of impairment evaluations is assessed to the insurer, except that the cost of an evaluation under subsection (3)(b)(i) or (3)(b)(ii) is assessed to the requesting party.

(6) A party may dispute a final impairment rating rendered under subsection (3)(b)(ii) by filing a petition with the workers' compensation court within 15 days of the evaluator's mailing of the report. Disputes over impairment ratings are not subject to 39-71-605 or to mandatory mediation.

(7) An impairment rating rendered under subsection (3) is presumed correct. This presumption is rebuttable."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

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# CHAPTER NO. 162

[HB 348]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO OCCUPATIONAL DISEASE TO CLARIFY THE MEDICAL PANEL EXAMINATION AND HEARING PROCESSES; AMENDING SECTIONS 39-72-601, 39-72-608, 39-72-612, AND 39-72-706, MCA; AND PROVIDING AN EFFECTIVE DATE AND SOME RETROACTIVE APPLICATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-72-601, MCA, is amended to read:

**"39-72-601. Medical panel.** *(1) The division shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by his specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.*

*(2) The division shall select a panel physician to examine a claimant as required.* The *division* shall appoint, *as required,* one member of the panel to be the chairman."

Section 2. Section 39-72-608, MCA, is amended to read:

**"39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the first medical examination *and report* as provided in 39-72-602 *must* be borne by the insurer. The expense of a reexamination *and panel report must* be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations *and reports,* as provided in 39-72-607, *must* be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, *must* be borne by the party requesting the autopsy."

Section 3. Section 39-72-612, MCA, is amended to read:

**"39-72-612. Hearing and appeal to workers' compensation judge.** (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a *hearing.* In order to perfect an appeal to the workers' compensation judge, the appealing party *shall* request a *hearing* before the division. The division *shall* grant a *hearing,* and the division's final determination may not be issued until after the *hearing.*

(2) Appeals from a final determination of the division *must* be made to the workers' compensation judge within 30 days after the division has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(a) in violation of constitutional or statutory provisions;

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(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Section 4. Section 39-72-706, MCA, is amended to read:

**"39-72-706. Aggravation.** (1) *If* an occupational disease is aggravated by any other disease or infirmity not itself compensable or *if* disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any *way* contributed to by an occupational disease, the compensation payable under this chapter *must* be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

(2) *If* compensation is reduced a proportionate amount as in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer *must* be reduced in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date — retroactive applicability.** (1) [This act] is effective July 1, 1989.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all occupational disease claims pending before the division.

Approved March 20, 1989.

# CHAPTER NO. 163

[HB 133]

AN ACT GENERALLY REVISING LAWS RELATING TO PAYMENT OF RENTALS, DELAY DRILLING PENALTIES, COMPENSATORY ROYALTIES, AND ROYALTIES ON STATE OIL AND GAS LEASES; PROVIDING FOR REFUND OF DELAY DRILLING PENALTIES FOR YEARS IN WHICH DRILLING OCCURS; AMENDING SECTIONS 77-3-423 THROUGH 77-3-425, 77-3-427, AND 77-3-432, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-3-423, MCA, is amended to read:

**"77-3-423. Annual rental.** (1) The annual money rentals to be paid to the state for oil and gas leases issued on and after July 1, 1975, shall

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be set by the board but may not be less than $1.50 for each acre of land leased.

(2) In addition to the sum of $1.50 per acre, the rental for the first year of the lease shall also include any sum in excess of $1.50 per acre offered and accepted for the first year's rental.

(3) This annual rental shall in no case be less than $100 a year.

(4) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable before the beginning of such subsequent year, and upon failure to make such payment, the lease terminates *unless there is a producing well on the lease. Rental paid for any year shall be credited against any royalty that accrues during that year.*"

Section 2. Section 77-3-425, MCA, is amended to read:

"**77-3-425. Dry hole clause.** If the first well drilled is a dry hole and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes *payment of any delay drilling penalties imposed by the board.* Upon the resumption of payment of *any required* delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments."

Section 3. Section 77-3-427, MCA, is amended to read:

"**77-3-427. Provision for offset wells — compensatory royalties.** (1) Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill offset wells wherever and whenever necessary to prevent waste and damage to the property of the state.

(2) The board may allow the lessee the *following options in lieu of drilling an offset well:*

*(a) releasing the lands in question; or*

*(b)* paying a compensatory royalty on a nonproducing lease if *the board* determines that such compensatory royalty will fully compensate the state for waste and damage to the property of the state. The compensatory royalty shall be based upon the estimated drainage, as determined by the board, and shall be paid on a monthly basis unless circumstances require otherwise.

*(3) If the board or the lessee terminates the lease, that termination does not impair any implied covenant against drainage or the right of the board to seek damages from the lessee for the lessee's failure to protect the lease from drainage of oil or gas by a well adjacent to the state lease.*"

Section 4. Section 77-3-432, MCA, is amended to read:

"**77-3-432. Royalty.** In every oil and gas lease granted by the state under this part and acts amendatory thereto, there shall be reserved to the

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state as consideration therefor a royalty *in* all oil and gas produced and saved from all lands covered thereby and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the board at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease. Such royalty reservation shall be set by the board but may not be less than 12 ½% on gas and not less than 12 ½% on that portion of the average production of oil or casinghead gasoline for each producing well not exceeding 3,000 barrels for the calendar month. The state may share the expense of transporting the oil to the nearest market on a basis proportional to the state's royalty interest in such oil and at a rate per mile acceptable to the department."

Section 5. Section 77-3-424, MCA, is amended to read:

**"77-3-424. Power to terminate lease in absence of commencement of drilling or payment of delay drilling penalty.** (1) In every oil and gas lease granted after March 3, 1955, under this part there *must* be reserved to the board full power to declare termination of the lease at the end of the fifth year or any subsequent year of the primary term of the lease upon failure of the lessee to either:

(a) commence the drilling of a well for oil and gas upon the leased premises; or

(b) pay a delay drilling penalty as follows:

(i) for the sixth year of the lease $1.25 per acre per year; and

(ii) for the remainder of the primary term of the lease an amount per acre per year as the board may in its discretion determine.

(2) Notice of that determination *must* be given to the lessee, and if the lessee applies for a hearing thereon within 10 days after receipt of the notice, the determination *becomes* final only after *the* hearing has been held.

(3) This annual delay drilling penalty *must* be paid each year in advance. *The board shall refund delay drilling penalties paid on a lease for any year in which the lessee commences drilling on that lease.*

(4) If a well for oil and gas is commenced, the drilling of the well *must* be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Applicability.** [This act] applies to all leases entered into after [the effective date of this act].

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Approved March 20, 1989.

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# CHAPTER NO. 164

[SB 366]

AN ACT TO PROVIDE FOR THE FILING OF SECURITY INTERESTS FOR SNOWMOBILES; AND AMENDING SECTIONS 23-2-611 AND 30-9-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-611, MCA, is amended to read:

**"23-2-611. Certificate of ownership — filing of security interests.** (1) *A* snowmobile may *not* be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town and county;

(c) business or home mail address of the owner;

(d) name and address of any lien holder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number; and

(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the

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applicant a certificate of ownership which shall contain that information in the application considered necessary by the department of justice and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $3 shall be paid to the county treasurer, $2 of which shall be forwarded by the county treasurer to the department of justice and deposited in the motor vehicle recording account of the state special revenue fund.

*(8) A security interest in a snowmobile is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been filed with the department of justice as provided in this section. The lien notice must be filed on a form approved by the department. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.*

*(9) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.*

*(10) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected by filing under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice". No other information regarding the additional security interests need be endorsed on the certificate.*

*(11) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.*

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*(12) The filing of a security interest or other lien as herein provided perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest.*

*(13) Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.*

*(14) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.*

*(15) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.*

*(16) It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on [the effective date of this act].*

*(17) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the motor vehicle recording account of the state special revenue fund in accordance with 15-1-504."*

Section 2. Section 30-9-203, MCA, is amended to read:

**"30-9-203. Attachment and enforceability of security interest — proceeds, formal requisites.** (1) Subject to the provisions of 30-4-208 on the security interest of a collecting bank, 30-8-321 on security interests in securities, and 30-9-113 on a security interest arising under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement or the debtor has signed a security agreement which contains a

description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by 30-9-306.

(4) A transaction, although subject to this chapter, is also subject to *Title 23, chapter 2, part 6, to* Title 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959, to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301 through 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1, part 4, as amended, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 165

[SB 365]

AN ACT TO PROVIDE FOR THE FILING OF SECURITY INTERESTS FOR BOATS; AND AMENDING SECTIONS 23-2-508 AND 30-9-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-508, MCA, is amended to read:

**"23-2-508. Certificate of ownership — filing of security interests.** (1) Except as provided in subsection (9), *a* motorboat or sailboat 12 feet in length or longer may *not* be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms

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furnished by the department of justice. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town or county;

(c) business or home address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) such other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, bill of sale, foreign title, official certificate of boat number, fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide such proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) Any motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

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(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $6 must be paid to the county treasurer, $4 of which must be forwarded by the county treasurer to the department of justice and deposited in the motor vehicle recording account of the state special revenue fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless he transfers a part of his interest in the motorboat or sailboat or he renews the certificate of number for the motorboat or sailboat.

*(10) A security interest in a boat is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been filed with the department of justice as provided in this section. The lien notice must be filed on a form approved by the department. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county where the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.*

*(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.*

*(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected by filing under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.*

*(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.*

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*(14) The filing of a security interest or other lien as herein provided perfects a security interest that has attached at the time the certificate of ownership noting the interest is issued. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest.*

*(15) Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.*

*(16) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that he fails to file the satisfaction.*

*(17) Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.*

*(18) It is not necessary to refile with the department of justice any instruments on file in the office of any county clerk and recorder on [the effective date of this act].*

*(19) A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the motor vehicle recording account of the state special revenue fund in accordance with 15-1-504."*

Section 2. Section 30-9-203, MCA, is amended to read:

**"30-9-203. Attachment and enforceability of security interest — proceeds, formal requisites.** (1) Subject to the provisions of 30-4-208 on the security interest of a collecting bank, 30-8-321 on security interests in securities, and 30-9-113 on a security interest arising under the Chapter on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

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(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by 30-9-306.

(4) A transaction, although subject to this chapter, is also subject to Title *23, chapter 2, part 5, to Title* 32, chapter 5, as enacted by Chapter 283, Laws of Montana 1959, to Title 31, chapter 1, part 2, as enacted by Chapter 282, Laws of Montana 1959, and to 81-8-301 through 81-8-305, Title 61, chapter 3, Title 16, chapters 1 through 6, and Title 31, chapter 1, part 4, as amended, and in the case of conflict between the provisions of this chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 166

[HB 276]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO LIVESTOCK; PROVIDING FOR SEASONAL BRANDS OF LIMITED DURATION; REVISING BRAND INSPECTION AND TRANSPORTATION PERMIT PROVISIONS; DELETING PROVISIONS RELATING TO TRANSPORTATION OF LIVESTOCK BY RAILROAD; DELETING THE BRAND INSPECTION REQUIREMENT FOR IMPORTED LIVESTOCK; INCLUDING LLAMAS AND BISON IN LAWS RELATING TO CONTAINMENT OF LIVESTOCK AND UNAUTHORIZED MOVEMENT OR TRANSPORTATION OF LIVESTOCK; DELETING GROSS VEHICLE WEIGHT OFFICERS AS INSPECTORS OF CERTAIN PERMITS; AMENDING SECTIONS 81-2-702, 81-3-103, 81-3-203, 81-3-205, 81-3-211 THROUGH 81-3-214, 81-3-231, 81-4-201, 81-4-214, 81-4-215, 81-4-306, 81-4-401, 81-4-402, 81-4-601, 81-4-603, 81-4-621, 81-5-101, AND 81-5-104, MCA; REPEALING SECTIONS 81-4-607 THROUGH 81-4-610 AND 81-8-801 THROUGH 81-8-805, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-2-702, MCA, is amended to read:

**"81-2-702. Definitions.** As used in this part, the following definitions apply:

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(1) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, fur-bearing and wild animals, and poultry and other birds.

(2) "Biologics" means medicinal preparations made from living organisms and their products. It includes but is not limited to serums, vaccines, antigens, and antitoxins.

(3) "Department" means the department of livestock.

(4) "Health certificate" means a legible record written on an official health certificate form of the state of origin or on an equivalent form of the U.S. department of agriculture attesting that the animals, animal semen, or animal biologics described thereon have been visually inspected by a federally accredited veterinarian and found to meet the entry requirements of the state of Montana.

(5) "Livestock" means cattle, horses, mules, asses, sheep, *llamas, bison,* swine, and goats.

(6) "Permit" means an official document issued by the department after proper application that allows the movement of animals, animal semen, or animal biologics into Montana.

(7) "Poultry" means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants."

Section 2. Section 81-3-103, MCA, is amended to read:

**"81-3-103. Application for recording — record of brands.** (1) A person, firm, or corporation desiring to have recorded an artificial mark or brand for use in distinguishing or identifying the ownership of any domestic animal or livestock shall make application for the mark or brand to the department. The application must be in writing and must contain the name, residence, and post-office address of the applicant and the species of the animals on which the mark or brand is to be used. *An applicant may apply for a seasonal mark or brand that is designated for use only for a specific period of time and that is subject to renewal upon termination of that period.*

(2) The department shall designate for the applicant's use some practical form of mark or brand distinguishable with reasonable certainty from all other marks and brands recorded or rerecorded, within the period of 10 years immediately preceding the time of filing the application, in the name of some person, firm, or corporation other than the applicant. The department shall designate the position on the animals on which the mark or brand shall be placed and the species of animals on which the mark or brand may be used.

(3) The department shall keep a record in a book kept by it for that purpose of the particular mark or brand, the position on the animal where the mark or brand is to be used, the species of animals on which the mark or brand is to be used, and the date of recording. The record is a public record and is prima facie evidence of the facts recorded in it."

Section 3. Section 81-3-203, MCA, is amended to read:

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"**81-3-203. Duties of state stock inspectors and deputy stock inspectors.** (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner or the duly authorized agent of the owner of livestock, shall inspect the livestock which is intended for sale, removal, shipment, or slaughter at a licensed slaughter plant and issue a certificate of inspection therefor if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof.

(2) The inspection shall include an examination of the livestock and all marks and brands thereon to identify ownership of the livestock. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information upon the form of certificate as the department may from time to time require. One copy of the certificate shall be retained by the inspector, one copy shall be furnished by the inspector to the owner or shipper of the livestock, and one copy shall be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors, upon application of an owner or his agent of the livestock to be consigned and delivered directly to a licensed livestock market or licensed livestock slaughterhouse located in another county of the state or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner or owners or their duly authorized agents sign the permit certifying the brands, description, and destination of the livestock. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles, and any other information upon the form of permit as the department may from time to time require. Any permit so issued shall be good for shipment within 36 hours from date and time of issue; however, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One copy of the permit shall be retained by the inspector, one copy shall be filed by the inspector with the department within 5 days of the date of issue, and one copy shall be furnished by the inspector to the owner or shipper of the livestock, which copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock is delivered.

(4) Upon application of an owner or his agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has

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lawful right to the possession thereof, a state stock inspector shall issue a transportation permit which will allow the movement of the livestock into an adjoining county to land owned or controlled by the owner or his agent for purposes of grazing. The transportation permit shall state the breed, description, marks and brands, if any, head count, and description of land to and from which the livestock will be moved. The permit *is* valid *as provided in 81-3-211(6)(d).* A state stock inspector may enter the premises where livestock so moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled therewith.

(5) Any person transporting strays or livestock not lawfully under his control is guilty of a misdemeanor and punishable as provided in 81-3-231."

Section 4. Section 81-3-205, MCA, is amended to read:

**"81-3-205. Fees for inspection and livestock transportation permits.** (1) For the service of inspection of all livestock except horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspections shall receive a fee established by the department for each head inspected. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county for all livestock, the inspector issuing the permits shall receive a fee established by the department for each permit issued and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive a fee established by the department for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector at the time of inspection or issuance of permit, and all the fees and expenses collected by a deputy state stock inspector shall be retained by him, and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(2) For the service of inspection before any livestock except a horse, mule, or ass is sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse, a state stock inspector or deputy state stock inspector making the inspection shall receive a fee established by the department for each head inspected. All fees shall be paid by the owner or by the person for whom the inspection is made. For releasing an animal so that it may be removed from the premises of a licensed livestock market, the state stock inspector making the release shall receive a fee established by the department for each head inspected from the owner or the person for whom the release is made. All fees for inspection and release at the market shall be collected at the time the inspection or release is made by the state stock inspector making the inspection or release and shall be sent by him to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. All fees for preslaughter inspection made at a licensed slaughterhouse by the state stock inspector shall be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of

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the department. Preslaughter inspection fees paid to a deputy state stock inspector shall be retained by him.

(3) (a) For the service of inspection of horses, mules, or asses before removal from a county or before change of ownership, the inspector making the inspection shall receive a fee established by the department for each head inspected and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made. All fees and expenses collected by a state stock inspector must be sent by him to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department.

(b) For the service of inspection before a horse, mule, or ass is sold or offered for sale at a licensed livestock market, a state stock inspector making the inspection shall receive a fee established by the department for each head inspected. All fees shall be paid by the owner or the person for whom the inspection is made to the state stock inspector.

(4) All inspection and release fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department unless paid to a deputy state stock inspector. State stock inspectors shall be paid for their services and receive their expenses as fixed by the department."

Section 5. Section 81-3-211, MCA, is amended to read:

**"81-3-211. Inspection of livestock before change of ownership or removal from county — transportation permits.** (1) For the purposes of this section:

(a) "Members of the same family" means a group whose membership is determined by including an individual, his spouse, and his parents, children, grandchildren, and the spouses of each.

(b) "Family business entity" means:

(i) a corporation whose stock is owned solely by members of the same family;

(ii) a partnership in which the partners are all members of the same family;

(iii) an association whose members all are members of the same family; or

(iv) any other entity owned solely by members of the same family.

*(c) "Rodeo producer" means a person who produces or furnishes livestock that is used for rodeo purposes.*

(2) Except as otherwise provided in this part, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection

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with and for the purpose of the transportation or removal or of such change of ownership as provided in this part. The inspection must be made in daylight. However, the change of ownership inspection requirements of this subsection do not apply when the change of ownership transaction is accomplished without the livestock changing premises, involves part of a herd to which no livestock have been added other than by natural increase or after brand inspection, and is between:

(a) members of the same family;

(b) a member of one family and the same family's business entity; or

(c) the same family's business entities.

(3) (a) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this part.

(b) It is unlawful to slaughter livestock at a licensed livestock slaughterhouse unless the livestock has been inspected for marks or brands by a state or deputy state stock inspector.

(4) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been released by a state stock inspector and a certificate of release for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market. The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.

(5) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this section or where change of ownership has occurred or when moved under a market consignment permit or a market release certificate, shall have in his possession the certificate of inspection, market consignment permit, transportation permit, or market release certificate issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector upon request. Section 81-3-204 shall be extended to livestock transported or sold under the above-mentioned permits.

(6) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business or where a purebred cow is being transported from county to county in this state by its owner for show purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow is to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

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(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared or a lip tattoo or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector, together with a permit fee established by the department, for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse. Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse, and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse, the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer is being transported from county to county in this state by the owner for rodeo purposes and where there is no change of ownership, the inspection certificate required by this section may be endorsed, as to the purpose and extent of transportation, by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective for the calendar year for which it is issued. The certificate shall be issued by a state stock inspector.

(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an adjoining county and return when the livestock is being moved for grazing purposes and when it is being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for *the period from March 31 through November 30 of the calendar year in which it is issued* and must be issued by a state stock inspector. *The permit may be issued only if the livestock is branded with the permittee's brand, which must be registered in Montana.* The department shall establish a fee for the permit, to be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the state special revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line.

(7) Before any removal or change of ownership may take place, the seller of livestock shall request all required inspections and shall pay the required fees."

Section 6. Section 81-3-212, MCA, is amended to read:

**"81-3-212. Exceptions.** Section 81-3-211 does not apply to livestock:

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(1) being transported through the state in interstate commerce without leaving the custody of the carrier;

*(2)* when driven on the hoof and not moved by means of any motor vehicle, trailer, horse-drawn vehicle, or boat by the owner from one county to *an* adjoining county within the state onto land owned or controlled by the owner of livestock so moved for the purpose of pasturing, feeding, or changing the range thereof;

*(3)* when driven on the hoof or moved by means of a motor vehicle, trailer, horse-drawn vehicle, or boat by the owner from one county to *an* adjoining county within this state onto land owned or controlled by the owner of livestock without leaving land owned or controlled by the owner when moved for the purpose of pasturing, feeding, or changing the range thereof;

*(4)* when driven on the hoof from one county to an adjoining county within this state for the purpose of delivery to a licensed public market by a person who has been the owner of that livestock for a period of at least 3 months;

*(5)* from one county to be consigned to, and which actually reaches, a licensed livestock market located in another county of the state at which the department regularly maintains a stock inspector and for which a market consignment permit has been obtained in a manner provided by law;

*(6) being transported to a veterinarian for health treatment and returned to their original premises if certification of treatment by the attending veterinarian accompanies the livestock on their return.*"

Section 7. Section 81-3-213, MCA, is amended to read:

"**81-3-213. Inspection of livestock removed from state.** Except as provided for in 81-3-212*(1)* and 81-3-211*(4) and (6)(b)*, nothing contained in this part authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this part."

Section 8. Section 81-3-214, MCA, is amended to read:

"**81-3-214. Entry permit.** *A* transportation permit for the entry of livestock into Montana *must be* obtained by the owner or his agent from a state stock inspector prior to the entry of the livestock into Montana. The department shall establish a fee for the permit, to be remitted by the department to the state treasury for credit to the state special revenue account of the department. The department shall provide by rule for the issuance and control of transportation permits authorized by this *section.*"

Section 9. Section 81-3-231, MCA, is amended to read:

"**81-3-231. Penalties.** (1) A person is guilty of a misdemeanor and is punishable as provided in subsection *(5)* of this section if he removes livestock or causes livestock to be removed from a county in this state:

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(a) without having the livestock inspected before removal if an inspection is required by law;

(b) without obtaining a market consignment permit or transportation permit if the permits are required by law;

(c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit;

(d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destination.

(2) A person who sells livestock or offers livestock for sale at a livestock market without having the livestock inspected or removes livestock or causes livestock to be removed from a livestock market without obtaining a release is guilty of a misdemeanor and is punishable as provided in subsection *(5)* of this section.

*(3)* A person who has in his charge livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, *transportation permit,* or a market release certificate has been issued and fails to have in his possession accompanying the livestock the inspection certificate, market consignment permit, *transportation permit,* or a market release certificate as issued for the livestock, or who, having the certificate of inspection, market consignment permit, *transportation permit,* or market release certificate, fails to exhibit it to a sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector at his request is guilty of a misdemeanor and is punishable as provided in subsection *(5)* of this section.

*(4)* Except as specifically otherwise provided, a person violating any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in subsection *(5)* of this section.

*(5)* Upon conviction under this section, a person, firm, association, or corporation shall be fined not less than $50 or more than $500 or imprisoned in the county jail for a period of not more than 6 months or both fined and imprisoned. Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% shall be paid into the state treasury and credited to the state special revenue fund for the use of the department and 50% shall be paid into the general fund of the county in which the conviction occurred."

Section 10. Section 81-4-201, MCA, is amended to read:

**"81-4-201. Swine, sheep, llamas, bison, and goats running at large.** It *is* unlawful for any owner or person in control of swine, sheep, *llamas, bison,* or goats to willfully permit the same to run at large."

Section 11. Section 81-4-214, MCA, is amended to read:

**"81-4-214. Branding animals running at large — running irons prohibited.** Every person *except* an owner, and he only when branding on

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his own premises and in the presence of two responsible citizens, who marks or brands any calf or cattle that are running at large between December 1 and May 10 of the next ensuing year, and every person who shall at any time brand or cause to be branded or marked, any horse, mule, cattle or head of cattle, sheep, *llama, bison,* swine, or other animal, 1 year old or older, with any piece of metal or implement, other than a branding iron, which branding iron shall be of the same design as the brand or mark owned by the party using it, or who shall so mark or brand, or cause to be marked or branded any of the animals aforesaid with any piece or pieces of iron called "running irons", such as bars, rings, half or quarter circles is punishable by imprisonment in the county jail for not exceeding 6 months, or by a fine of not less than $25 or more than $500, or both."

Section 12. Section 81-4-215, MCA, is amended to read:

**"81-4-215. Liability of owners of stock for trespass.** If any cattle, horses, mules, asses, hogs, sheep, *llamas,* bison, or other domestic animals break into any enclosure, the fence being legal as provided in 81-4-101, the owner of such animals is liable for all damages to the owner or occupant of the enclosure which may be sustained thereby. This section must not be construed so as to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law."

Section 13. Section 81-4-306, MCA, is amended to read:

**"81-4-306. Penalty for permitting animals to run at large in herd districts.** (1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, *llamas, bison,* asses, hogs, or goats, who willfully *permits such animals* to run at large within any herd district, *is* guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that each five head or less of such horses, mules, cattle, sheep, *llamas, bison,* asses, hogs, or goats are willfully permitted to run at large *constitutes* a separate offense.

(2) Any person who is the owner or entitled to the possession of any bull, stallion, or jackass over 1 year of age who willfully *permits such animal* to run at large within any herd district *is* guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that *a* bull *is* permitted to run at large *constitutes* a separate offense."

Section 14. Section 81-4-401, MCA, is amended to read:

**"81-4-401. Certain livestock not to run at large in municipalities.** *No* horses, cattle, mules, sheep, *llamas, bison,* goats, *or* swine *may* be allowed to run at large in any incorporated city or town."

Section 15. Section 81-4-402, MCA, is amended to read:

**"81-4-402. Punishment for permitting trespass of livestock.** Any person owning livestock or having in charge any horses, mules, cattle, sheep, *llamas, bison,* goats, or swine, who willfully and unlawfully permits such livestock to trespass in violation of any of the provisions of 81-4-401 *is* guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law."

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Section 16. Section 81-4-601, MCA, is amended to read:

**"81-4-601. Estray defined.** In this part, "estray" means a horse, mule, mare, gelding, colt, *llama, bison,* cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb:

(1) not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders;

(2) bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or

(3) which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders."

Section 17. Section 81-4-603, MCA, is amended to read:

**"81-4-603. Taking up and disposition of estrays — advertisement.** (1) A stock inspector authorized by the department shall take into his possession an estray found in his district and shall either ship or arrange for the shipment of the estray to a licensed livestock market for sale, or he may hold the estray in his possession and care for the estray in the cheapest and most practicable manner for a period of not less than 30 days or more than 60 days, during which time he shall advertise that he holds the estray and that, unless claimed by the owner, he will on a date to be specified in the notice sell the estray at a public auction to the highest bidder for cash.

(2) The notice shall be published in the newspaper doing the county printing of the county in which the estray is found and in addition to that paper in a paper published in the town or city nearest the place in which the estray is held. This notice shall be published at least once a week for 4 consecutive weeks and shall contain a statement of the date of the sale, the place where the sale is to be held, and a general description of the estray, including the sex and the approximate age, together with an illustration of the brand and the position of the brand on the estray and a description of the place or locality where the estray was found or taken.

(3) The proceeds from the sale shall be disposed of under 81-4-605 and 81-4-606.

(4) The owner of the estray may appear and claim it at any time before the sale or shipment, as provided in this part, *upon payment to the department of the cost of caring for the estray as determined by the department.*"

Section 18. Section 81-4-621, MCA, is amended to read:

**"81-4-621. Penalties.** Any person who shall, for his own use or benefit and without the owner's consent, take into his possession any estray shall be guilty of a misdemeanor and shall be punishable by a fine of not

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less than $25 or more than $100 or by imprisonment in the county jail not exceeding 60 days or by both such fine and imprisonment."

Section 19. Section 81-5-101, MCA, is amended to read:

**"81-5-101. Moving livestock from customary range forbidden.** Every person who willfully moves or causes to be moved any cattle, horses, mules, *swine, llamas, bison,* or sheep from their customary range without the permission of the owner thereof is punishable by imprisonment in the county jail not exceeding 90 days or by fine not exceeding $100, or both."

Section 20. Section 81-5-104, MCA, is amended to read:

**"81-5-104. Stolen livestock — seizure and forfeiture of vehicle used to transport.** (1) The use of any vehicle for the transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, *llama, bison,* hogs, poultry, or the products of any thereof is unlawful, and such vehicle shall be forfeited to the state. Any vehicle found in such use or upon probable cause believed to be devoted wholly or in part to such use shall be seized and held.

(2) Within 45 days after the seizure, any peace officer or officer of the agency that seizes any property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the same to be served upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for such unlawful transportation; or

(b) the owner thereof is not in collusion with the party or parties guilty of the theft."

Section 21. **Repealer.** Sections 81-4-607 through 81-4-610 and 81-8-801 through 81-8-805, MCA, are repealed.

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Section 22. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 23. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

# CHAPTER NO. 167

[HB 675]

AN ACT GENERALLY REVISING THE LAW RELATING TO MANAGEMENT OF ALFALFA LEAF-CUTTING BEES; ESTABLISHING AN UNRESTRICTED AREA CLASSIFICATION AND PROVIDING A PENALTY; REQUIRING IDENTIFICATION ON CERTAIN BEE EQUIPMENT OR NESTING MATERIAL; REGULATING CUSTOM POLLINATORS; CLARIFYING THE STATUS OF THE ALFALFA LEAF-CUTTING BEE COMMITTEE; PROVIDING FOR STAGGERED COMMITTEE MEMBER TERMS; AMENDING SECTIONS 2-15-3005 AND 80-6-1102 THROUGH 80-6-1112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-3005, MCA, is amended to read:

**"2-15-3005. Alfalfa leaf-cutting bee committee — membership — compensation.** (1) There is an alfalfa leaf-cutting bee committee consisting of five members appointed by the governor. The committee is attached to the department for administrative purposes only as prescribed in 2-15-121.

(2) The committee consists of:

(a) three members from the Montana alfalfa seed association;

(b) one member from the department; and

(c) one member from the cooperative extension service at Montana state university.

(3) A list of nominees for appointment to the committee may be submitted to the governor by the Montana alfalfa seed association, the department, and the cooperative extension service for the respective appointments from each entity.

(4) Appointments to the committee are for 3 years. *Appointments from the Montana alfalfa seed association are for staggered 3-year terms.* Members may be reappointed at the discretion of the governor.

(5) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid

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from the enterprise fund established in 80-6-1109 compensation of $25 for each day in which he is engaged in the transaction of the official business of the committee, together with expenses as provided for in 2-18-501 through 2-18-503."

Section 2. Section 80-6-1102, MCA, is amended to read:

**"80-6-1102. Definitions.** As used in this part, the following definitions apply:

(1) "Bee" means any stage in the life cycle of a bee of the species Megachile rotundata (F), commonly known as the alfalfa leaf-cutting bee.

(2) "Certification" means the process of analyzing bees and equipment by the *committee* to determine whether they meet required standards.

*(3) "Chalkbrood" means a fungal disease that attacks larvae of the alfalfa leaf-cutting bee.*

*(4)* "Committee" means the alfalfa leaf-cutting bee committee established in 2-15-3005.

*(5) "Custom pollinator" means a registered bee grower who for the purpose of pollination moves bees onto property not owned or leased by him.*

*(6)* "Department" means the department of agriculture established in 2-15-3001.

*(7) "Emergency situation" means a situation that requires the untimely movement of bees to a new food source. A situation may include drought, flood, hail damage, and other similar situations as defined by committee rule.*

*(8)* "Equipment" means shelters, trays, incubators, cell removers, tumblers, and other apparatus *except nesting materials* used in rearing bees.

*(9)* "Nest destroyer" means any organism that competes with the bee larvae for nest provisions.

*(10)* "Nesting materials" means laminates, *drilled boards,* and other apparatus used in nesting bees.

*(11)* "Parasite" means an organism living in or on any stage of the alfalfa leaf-cutting bee obtaining nutriment from the body of the bee.

*(12)* "Pathogen" means an organism that causes disease in the alfalfa leaf-cutting bee.

*(13)* "Person" means an individual, association, partnership, or corporation.

*(14)* "Predator" means any organism *or insect* which preys on, devours, or destroys bees *or nests.*

*(15) "Unrestricted area" means an area where a person may use new or used drilled boards, imported used laminates, or any similar material in the rearing of bees.*

*(16)* "Wild trap" means to *intentionally* trap bees on property not owned or leased by the trapper."

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Section 3. Section 80-6-1103, MCA, is amended to read:

**"80-6-1103. Committee responsibilities — adoption of rules.** (1) The *committee* is responsible for the administration of this part.

(2) The *committee* shall by rule adopt minimum standards for the presence of pathogens and parasites.

(3) The *committee* may adopt rules establishing minimum standards for the presence of predators and nest destoyers in bees to be certified, imported, quarantined, and possessed or controlled in the state of Montana.

(4) The *committee* may provide information and services relating to the rearing of alfalfa leaf-cutting bees and alfalfa seed production.

(5) The *committee* may enter into agreements with other governmental agencies or private associations in carrying out the provisions of this part.

(6) In performing its duties under this part, the *committee* may:

(a) enter upon any public or private premises to inspect equipment and sample bees;

(b) by rule establish quarantines to regulate the entry of bees, equipment, *and nesting material* into areas of Montana specified in the quarantines;

(c) quarantine any bees, equipment, *or nesting material* found to be infected or contaminated at levels exceeding importation or quarantine standards;

(d) order the disinfection, destruction, or removal of any bees, equipment, *or nesting material* that does not meet importation or quarantine standards.

*(7) Upon receiving notification of nesting material or bees that appear to be abandoned, the committee shall contact the owner as soon as possible to correct the problem. If the owner cannot be found, the nesting material or bees must be considered abandoned and the procedures for disposition of abandoned property set out in Title 70, chapter 9, part 3, must be followed.*

*(8)* (a) Whenever the *committee* has reasonable cause to believe a person is in possession of any bees or equipment in violation of this part or rules adopted under it, the *committee* may order a quarantine of the suspected bees or equipment and may require any person in possession of *the* bees or equipment to hold them under specified conditions until notified otherwise in writing by the *committee.*

(b) The *committee* shall release any quarantine upon finding that the bees and equipment are in compliance with this part."

Section 4. Section 80-6-1104, MCA, is amended to read:

**"80-6-1104. Advisory duty of committee.** The committee shall advise the department with respect to any contemplated rulemaking. The

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committee shall meet periodically to review the minimum standards adopted *under this part.*"

Section 5. Section 80-6-1105, MCA, is amended to read:

"**80-6-1105. Alfalfa leaf-cutting bees — certification.** (1) A person possessing or controlling alfalfa leaf-cutting bees in the state of Montana may annually certify all or part of his bees as provided in this section.

(2) To certify bees, a person must file a completed application form provided by the department, together with *a* fee set by rule. The applicant must provide the followir g:

(a) name and place of residence;

(b) the general location and number of bees to be *certified*; and

(c) other relevant information as may be required by *committee* rule.

(3) After receipt of an application for certification, a sample of the total population of bees to be certified shall be selected by the *committee* or its agent in a manner prescribed by the *committee.* The sample shall be analyzed for pathogens, parasites, predators, nest destroyers, *and* live larvae count. If certification standards are met, the sample shall be certified.

(4) All bees to be certified may be stored in containers which can be officially sealed after sampling to maintain their certification identity.

(5) When the *committee* has in its possession a completed application form, *an appropriate* fee, and a report that the sample meets certification standards, it may issue a certificate for the bees.

(6) The *committee* shall *by rule* specify the date by which any applicant must apply for recertification the following year."

Section 6. Section 80-6-1106, MCA, is amended to read:

"**80-6-1106. Bee laboratory authorized.** The *committee* or its agent may develop and maintain a laboratory for the purpose of providing analytical services required to carry out the provisions of this part. The laboratory may be authorized by the *committee* to provide services to persons possessing any bees or equipment on a fee-for-service basis."

Section 7. Section 80-6-1107, MCA, is amended to read:

"**80-6-1107. Restrictions on importing bees.** (1) All bees to be imported shall meet importation, quarantine, and certification requirements established under 80-6-1103 and must be registered in accordance with 80-6-1111.

(2) Prior to the importation of any bee, the importer *shall* file a completed application form as required in 80-6-1105(2) and arrange an approximate date and time for official sampling.

*(3) Bees* may *not* be imported except in loose cells or as adults. *Bees* may *not* be imported in a drilled board, soda straw, or other equipment that prevents adequate sampling of the bees.

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*(4)* A representative sample of the population of bees imported shall be the basis for certification.

*(5) A* bee may *not* be certified unless all other requirements for certification provided in 80-6-1105 are met."

Section 8. Section 80-6-1108, MCA, is amended to read:

**"80-6-1108. Restrictions on the rearing, moving, selling, and trapping of bees and the movement of used nesting material.** (1) *A* person may *not* rear any bee in a drilled board or a nesting material from which samples of loose larval cells cannot readily be obtained, *except in an unrestricted area.*

(2) *A* person may *not* move any quarantined bee or equipment except by special permit issued by the *committee.*

(3) *A* person may *not* wild trap or attempt to wild trap bees unless that person has been issued a permit for such activity in accordance with rules adopted by the *committee.* The *committee* shall by rule establish the permit fee.

(4) *A* person may *not* sell bees *for use* in Montana unless the bees are officially certified in accordance with 80-6-1103 and 80-6-1105.

*(5) Any purchase of used nesting material in the state must be reported to the committee."*

Section 9. Section 80-6-1109, MCA, is amended to read:

**"80-6-1109. Fees to be set by rule — self-supporting program — enterprise fund established.** (1) Fees authorized to be charged by this part *must* be set by *committee* rule. *The* fees *must* be designed to reimburse the *committee* for costs incurred in providing services and carrying out its duties under this part. It is the intent of the legislature that *committee* activities under this part be self-supporting.

(2) There is an enterprise fund known as the leaf-cutting bee fund for use by the *committee.* Fees collected under this part *must* be paid into the leaf-cutting bee fund.

(3) The *committee* may direct the board of investments to invest money from the fund pursuant to the provisions of the unified investment program. The income from such investments must be credited to the leaf-cutting bee fund."

Section 10. Section 80-6-1110, MCA, is amended to read:

**"80-6-1110. Violation — penalty.** A person who imports, possesses, controls, moves, or wild traps or attempts to import, possess, control, move, or wild trap any bee or equipment in violation of this part or who interferes with or attempts to interfere with the efforts of the *committee* or its agent to perform its duty under this part is guilty of a misdemeanor and upon conviction shall be fined not less than $300 or more than $500 for the first conviction and not less than $300 or more than $1,000 for each subsequent conviction."

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Section 11. Section 80-6-1111, MCA, is amended to read:

**"80-6-1111. Alfalfa leaf-cutting bees — registration.** (1) *A* person may *not* possess or control alfalfa leaf-cutting bees in this state unless the bees are registered annually as provided in this section.

(2) To register bees, a person must file a completed application form provided by the department, together with the registration fee set by rule. The applicant must provide the following:

(a) name and place of residence;

(b) the general location of bees to be registered; and

(c) other relevant information as may be required by *committee* rule.

*(3)* The *committee* shall *by rule* specify the date by which any applicant must apply for reregistration each year. Applications for reregistration received after the date specified must be assessed a penalty equal to 50% of the applicable registration fee."

Section 12. Section 80-6-1112, MCA, is amended to read:

**"80-6-1112. Funding limitation.** *(1)* The *committee* shall expend only those funds which are raised by fees under this part. In the event that funds are insufficient to finance the costs of services under this part, the *committee* may reduce services accordingly.

*(2) The committee may contract lab services with a qualified person and charge growers at cost on a per-sample basis.*

*(3) The committee may levy a fee set by committee rule not to exceed 30 cents for each 3,000 holes of nesting material deeper than 3 ½ inches for the purpose of administering this part and for the sampling and testing of bees. For nesting material 3 ½ inches deep or less, the fee may not exceed 16 cents per 2,000 holes of nesting material.*

*(4) Fees must be based on all nesting materials that are in field use on July 15 of each year. Fees are due on November 1 of each year.*

*(5) The amount of fees paid must be credited against a grower's cost of sampling and certification.*

*(6) Certification fees for drilled boards or loose cells may not exceed committee cost."*

Section 13. **Unrestricted area classification — penalty.** (1) A registered bee grower may establish an unrestricted area by obtaining written permission of all bee growers within a 5-mile radius of his alfalfa seed fields. Evidence of the permission must be recorded with the committee.

(2) Unrestricted area classification may be rescinded by unanimous written consent of all registered bee growers within the unrestricted area.

(3) A penalty of up to $1,000 shall be levied against a person who violates this section.

Section 14. **Identification.** Each bee grower shall print his name, address, and telephone number on each shelter or on at least 10% of the nesting material in each shelter.

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Section 15. **Custom pollinating.** (1) A custom pollinator may move bees, equipment, and nesting material into an area other than his own provided he has first received permission from all registered bee growers within a 5-mile radius of the fields he intends to pollinate. This permission must be based on management practices rather than personal factors. This permission must be reported to the committee by June 1 and before the movement of bees, equipment, and nesting material. Once permission is granted, the custom pollinator qualifies as a registered bee grower within that area for as long as he pollinates in that area. If permission is denied, the requestor may petition the committee to determine if the denial was based on management practices. This determination must be made by the committee in accordance with Title 2, chapter 4, part 6.

(2) Between June 1 and September 1, a person may move his bees in an emergency situation by reporting the emergency situation to the committee by phone. He shall give proof of written permission within 10 days.

(3) Committee-certified bees that are found by the committee to be free from chalkbrood may be moved into any area without permission. Notice must be given to the department prior to movement.

Section 16. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 17. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

# CHAPTER NO. 168

[SB 141]

AN ACT TO INCREASE THE LENGTH OF TIME THE CLERK AND RECORDER HAS TO SUBMIT THE CLERK'S MONTHLY REPORT CONCERNING EXPENDITURES, LIABILITIES, AND APPROPRIATIONS TO THE BOARD OF COUNTY COMMISSIONERS; AMENDING SECTION 7-6-2331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-2331, MCA, is amended to read:

**"7-6-2331. Clerk's report concerning expenditures, liabilities, and appropriations — auditor's report.** (1) *Within 4 working days after receipt of the treasurer's monthly report,* the county clerk and recorder shall submit to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the fiscal year to the first day of the month in which such

report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

(2) In counties having county auditors, the county auditor, on the last business day of each month, shall furnish the county clerk and recorder with a statement showing the total amount of liabilities incurred against each budget appropriation for which warrants have not been issued up to the close of said business day."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

# CHAPTER NO. 169

[HB 684]

AN ACT TO AMEND THE MONTANA FOOD, DRUG, AND COSMETIC ACT TO INCLUDE REGULATION OF BOTTLED WATER; AND AMENDING SECTIONS 50-31-103, 50-31-110, 50-31-208, AND 50-31-312, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-31-103, MCA, is amended to read:

**"50-31-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

*(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.*

*(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.*

*(4)* "Beef patty mix" means "hamburger" or "ground beef" to which *have* been added binders or extenders as those terms are understood by general custom and usage in the food industry.

*(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source that is disinfected and placed in a sealed container or package for human consumption.*

*(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.*

*(7)* "Color" includes black, white, and intermediate grays.

*(8)* (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or hereafter is exempted under the federal act.

*(9)* "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(1)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

*(10)* "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

*(11)* "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

*(12)* "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or

distributed by the other drug manufacturer, processor, packer, or distributor.

*(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and contains not more than 10 parts per million total solids.*

*(14)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

*(15)* "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

*(16) "Distilled water" means purified water that has been vaporized and condensed.*

*(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.*

*(18)* "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

*(19)* "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

*(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and complies with the food and drug administration quality standards set forth in 21 CFR 103.35.*

*(21)* "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

*(22)* (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting. or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) color additive;

(iv) substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

*(23)* "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point of service, and any facility operated by a governmental entity where food is served.

*(24)* "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are three grades of hamburger or ground beef:

(a) "economy hamburger" or "economy ground beef" may have a fat content no greater than the federal standard set forth in 9 C.F.R. 319.15;

(b) "regular hamburger" or "regular ground beef" may have a fat content no greater than 21%;

(c) "extra lean hamburger" or "extra lean ground beef" may have a fat content no greater than 18%.

*(25)* "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

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*(26)* "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

*(27)* "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

*(28)* "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

*(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.*

*(30)* "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

*(31)* "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

*(32)* "Organic food" means food that conforms to the definition in 50-31-222.

*(33)* "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

*(34)* "Person" includes an individual, partnership, corporation, and association.

*(35)* "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

*(36)* "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

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*(37)* "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

*(38)* "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of such food in a package.

*(39) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of America, 1980.*

*(40)* "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

*(41)* "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public with or without charge.

*(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.*

*(43)* "State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104.

*(44)* "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

*(45) "Water-bottling plant" means any facility in which bottled water is produced.*

*(46) "Well water" means water that:*

*(a) is taken from below the ground through a piping device or similar installed device utilizing external force or vacuum;*

*(b) is not modified in its mineral content; and*

*(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."*

Section 2. **Labeling requirements for bottled water.** (1) A person may not sell, deliver, offer for sale, hold for sale, or give away bottled water unless it conforms to and is labeled in compliance with the following standards:

(a) bottled mineral water must be labeled "mineral water" or "natural mineral water";

(b) bottled water that contains naturally occurring carbon dioxide that emerges from the water and is bottled directly with its entrapped gas or that has been mechanically separated from and subsequently reintroduced

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into the water at a level not higher than that naturally occurring in the water must be labeled "naturally carbonated water" or "naturally sparkling water". Bottled water that contains carbon dioxide from a source that is not naturally occurring may not be labeled with the word "naturally".

(c) bottled artesian water may be labeled "artesian well water", "natural artesian water", or "natural well water";

(d) bottled spring water may be labeled "spring water" or "natural spring water";

(e) bottled well water may be labeled "well water" or "natural well water";

(f) bottled purified water must be labeled "purified water" and state the method of preparation. All of the letters specifiying the type of bottled water must be printed in the same type size, style, and color. However, bottled purified water produced by distillation may be labeled "distilled water".

(g) bottled demineralized water that is not purified water must be labeled "demineralized water" and state the method of preparation. All of the letters specifying the type of bottled water must be printed in the same type size, style, and color. However, bottled demineralized water produced by distillation may be labeled "distilled water".

(h) bottled drinking water must be labeled "drinking water";

(i) bottled fluoridated water must specify on the label whether the fluoride is naturally occurring or added;

(j) unless the water is in fact spring water, language containing the word "spring" or "springs" may not be used as a brand name on the label or in words describing the bottled water.

(2) A product meeting more than one definition may be labeled with any of the definitions with which it complies.

Section 3. **Health claims for bottled water.** Claims of medicinal or health-giving properties on labels or in advertisements for bottled water are prohibited.

Section 4. **Misrepresentation of a company name.** A bottler, distributor, or vendor of bottled water whose company name or trademark contains the words "spring", "springs", "well", "artesian well", "mineral", or any derivative of those words shall label each bottle with the company's brand name or trademark and, if the source of the bottled water is different from the source stated in the company name, the source of the water. This information must be in typeface at least equal to the size of the typeface of the company name or trademark.

Section 5. Section 50-31-110, MCA, is amended to read:

**"50-31-110. Certain agricultural chemicals not color additives.** Subsections *(7)* and *(8)* of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the

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growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest."

Section 6. Section 50-31-208, MCA, is amended to read:

**"50-31-208. Sale of hamburger and beef patty mix.** (1) No food service establishment or retail establishment may use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail establishment selling or serving beef patty mix may refer to the product as "beef patty mix" or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail establishment, a list of ingredients must appear on the menu or label, or, if there is no menu or label, on a placard as follows:

(a) The term "beef patty mix" or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu or label, the lettering on the placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail establishment, the grade, as defined in 50-31-103*(24)*, and the maximum fat content must appear on each displayed package, or if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d) of this section. The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment."

Section 7. Section 50-31-312, MCA, is amended to read:

**"50-31-312. Exemptions from new drug application requirement.** (1) Section 50-31-311 shall not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act;

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262); or

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(d) any drug which is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103*(30)* shall not apply to any drug, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug, which on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103*(30)* as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act."

Section 8. **Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 50, chapter 31, and the provisions of Title 50, chapter 31, apply to [sections 2 through 4].

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 170

[SB 304]

AN ACT AUTHORIZING THE BOARD OF REGENTS OF HIGHER EDUCATION TO WAIVE TUITION AND FEES FOR NATIVE AMERICANS, CERTAIN MILITARY VETERANS, AND SURVIVORS OF CERTAIN VETERANS, FIREFIGHTERS, OR PEACE OFFICERS; ELIMINATING THE STATUTORY WAIVER OF TUITION FOR CERTAIN PERSONS; AMENDING SECTIONS 20-25-421 AND 53-30-213, MCA; REPEALING SECTIONS 10-2-311 THROUGH 10-2-314 AND 20-25-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-25-421, MCA, is amended to read:

**"20-25-421. Charges for tuition — waivers.** The regents may:

(1) prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction;

(2) waive nonresident tuition for selected and approved nonresident students, not to exceed at any unit 2% of the full-time equivalent enrollment at that unit during the preceding year; except that when necessary tuition may be waived in excess of 2% of unit enrollment for nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal

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agreements which provide for the payment, where required, of the student support fee by the reciprocal state;

(3) waive resident tuition for students at least 62 years of age;

*(4) waive tuition and fees for:*

*(a) persons of one-fourth Indian blood or more who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;*

*(b) persons designated by the department of family services pursuant to 53-30-213;*

*(c) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;*

*(d) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States; or*

*(e) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action;*

*(5) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of his choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:*

*(a) a paid or volunteer member of a municipal or rural fire department;*

*(b) a law enforcement officer as defined in 7-32-201; or*

*(c) a full-time highway patrol officer.*"

Section 2. Section 53-30-213, MCA, is amended to read:

"**53-30-213. University aid to residents of schools.** The department of family services may on the recommendation of the superintendent authorize a resident of the Mountain View school or Pine Hills school who has completed high school and who is otherwise eligible to receive up to $800 per year toward his expenses incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing, books, board, and room and shall be paid in the same manner as other expenses of the school. *The board of regents of higher education may waive fees and tuition for these residents pursuant to 20-25-421.* No more than eight residents of each school may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents it has designated to receive the benefits for the forthcoming school year."

Section 3. **Repealer.** Sections 10-2-311 through 10-2-314 and 20-25-505, MCA, are repealed.

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Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

# CHAPTER NO. 171

[SB 49]

AN ACT TO CLARIFY THAT SEASONAL AND TEMPORARY PART-TIME STATE EMPLOYEES WHO REGULARLY WORK LESS THAN 20 HOURS A WEEK ARE NOT ELIGIBLE FOR THE STATE GROUP BENEFITS PLAN; AMENDING SECTIONS 2-18-701 AND 2-18-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-701, MCA, is amended to read:

**"2-18-701. Definitions.** In this part, as it applies to a person employed in the executive, judicial, or legislative branches of state government, "employee" means:

(1) a permanent full-time employee, *as provided* in 2-18-601;

(2) a permanent *part-time* employee, as *provided* in 2-18-601, who is *regularly* scheduled to work 20 hours or more a week;

(3) a seasonal *full-time* employee, as *provided* in 2-18-601, who is *regularly* scheduled to work 6 months or more a year *or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so*;

*(4) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;*

*(5)* elected officials;

*(6)* officers and permanent employees of the legislative branch;

*(7)* judges and permanent employees of the judicial branch;

*(8)* academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;

*(9) a* temporary *full-time employee,* as *provided* in 2-18-601*:*

*(a)* who *is regularly* scheduled to work more than 6 months a year;

*(b)* who *works* for a continuous period of more than 6 months *a year although not regularly scheduled to do so;* or

*(c)* whose temporary status is defined through collective bargaining; *and*

*(10) a temporary part-time employee, as provided in 2-18-601:*

*(a) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;*

*(b) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or*

*(c) whose temporary status is defined through collective bargaining.*"

Section 2. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be $115 per month for the fiscal years ending June 30, 1988, and June 30, 1989, and $115 per month for each fiscal year thereafter. Permanent part-time, *seasonal part-time, and temporary part-time* employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee shall be transferred to an account established for this purpose by the department of administration and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

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# CHAPTER NO. 172

[HB 265]

AN ACT REVISING THE LAW PERTAINING TO THE DISPOSITION OF DELINQUENT YOUTH AND YOUTH IN NEED OF SUPERVISION TO CLARIFY AND REORGANIZE THE DISPOSITIONAL OPTIONS OF THE YOUTH COURT; AMENDING SECTION 41-5-523, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department *if the court determines that the youth is in need of placement in other than the youth's own home*; provided, however, that:

(i) in the case of a youth in need of supervision, *the* court shall determine whether continuation in the home would be contrary to the welfare of the *youth* and whether reasonable efforts have been made to prevent or eliminate the need for removal of the *youth* from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is *determined by the court to be* a serious juvenile offender, the judge may specify that the youth be placed in *a youth correctional facility* if the judge finds that such *placement* is necessary for the protection of the public;

*(c)* order restitution by the youth or his parents;

*(d)* impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

*(e)* require the performance of community service;

*(f)* require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

*(g)* require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

*(h)* require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate; or

*(i) order* such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community *and that does*

*not obligate funding from the department without the department's approval.*

*(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:*

*(a) A youth in need of supervision may not be placed in a youth correctional facility.*

*(b) A youth may not be held in a youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.*

*(c) No youth may be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.*

*(3) A youth placed by the department in a youth correctional facility must be supervised by the department. A youth placed in any other placement must be supervised by the youth probation officer of the youth court having jurisdiction over the youth.*

*(4)* At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

*(5)* No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

*(6)* Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

*(7)* Whenever the court *commits a youth to the* department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

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# CHAPTER NO. 173

[SB 221]

AN ACT IMPOSING A SPEED LIMIT OF 35 MILES PER HOUR ON A HIGHWAY BEING SURVEYED; AND AMENDING SECTION 61-8-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-8-303, MCA, is amended to read:

**"61-8-303. Speed restrictions — basic rule.** (1) A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to view ahead, and he shall drive it so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

(2) Where no special hazard exists that requires lower speed for compliance with subsection (1) of this section, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309, 61-8-310, 61-8-311, and 61-8-313 is lawful, but a speed in excess of those limits is unlawful:

(a) 25 miles per hour in an urban district;

(b) 35 miles per hour on a highway under construction or repair *or on a highway being surveyed*;

(c) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour.

(3) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

(4) The speed limits set forth in this section may be altered by the highway commission as authorized in 61-8-309, 61-8-310, and 61-8-313.

(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition."

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Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 174

[HB 189]

AN ACT INCREASING THE SENTENCE FOR THE CRIME OF INCEST IF THE OFFENDER INFLICTS BODILY INJURY UPON ANYONE IN THE COURSE OF COMMITTING THE CRIME OR IF THE VICTIM IS UNDER 16 YEARS OF AGE AND THE OFFENDER IS 3 OR MORE YEARS OLDER THAN THE VICTIM; AND AMENDING SECTION 45-5-507, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-507, MCA, is amended to read:

"**45-5-507. Incest.** (1) A person commits the offense of incest if he knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact as defined in 45-2-101 with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

*(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.*

*(5)* In addition to any sentence imposed under subsection (3) *or (4)*, after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Approved March 20, 1989.

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# CHAPTER NO. 175

[HB 423]

AN ACT AUTHORIZING THE DEPARTMENT OF LIVESTOCK TO ADOPT RULES TO IMPOSE A PERMIT SYSTEM FOR THE TRANSPORTATION OF SHEEP; PROVIDING A PENALTY; REPEALING SECTIONS 81-5-201 THROUGH 81-5-204, MCA; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent for this bill is necessary because it requires the department of livestock to adopt rules implementing a permit system for the transportation of sheep within or out of the state. The legislature intends that the rules be designed to provide the owner with protection against the theft of his sheep by requiring a permit for the removal of sheep:

(a) from one county to another county within the state; and

(b) out of the state.

Provision must be made for the form of the permit and for issuance of the permit by state livestock inspectors. The department shall also determine a fee for the issuance of the permit, commensurate with the cost of operating the permit system.

It is the intent of the legislature that the department of livestock monitor this permit system to determine the system's effectiveness prior to the termination date of this legislation.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Permit system for transportation of sheep — penalty.** (1) The department shall adopt rules imposing a permit system for the transportation of sheep within or out of the state if it finds that a permit system is necessary to prevent theft of sheep. The rules must establish fees commensurate with the department's cost of operating the permit system.

(2) A person who purposely or knowingly transports sheep in violation of rules adopted under subsection (1) is guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000 or imprisonment in the county jail for a term not exceeding 6 months, or both.

Section 2. **Repealer.** Sections 81-5-201 through 81-5-204, MCA, are repealed.

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 81, chapter 5, part 1, and the provisions of Title 81 apply to [section 1].

Section 4. **Termination.** [This act] terminates September 30, 1993.

Approved March 20, 1989.

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# CHAPTER NO. 176

[SB 227]

AN ACT REVISING THE COMPOSITION OF THE FLATHEAD BASIN COMMISSION; AND AMENDING SECTION 2-15-213, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-213, MCA, is amended to read:

**"2-15-213. Flathead basin commission — membership — compensation.** (1) There is a Flathead basin commission.

(2) The commission consists of *21* members selected as follows:

(a) *seven* members appointed by the governor from industrial, environmental, and other *interests* affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff and who also serves as the executive director;

(b) one member who shall be the commissioner of state lands or his designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior national park service, regional director for the Rocky Mountain region;

(h) *six* ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; *the regional administrator of the United States department of interior, bureau of reclamation;* the administrator of the Bonneville Power Administration; the chief of engineers of the United States army corps of engineers; and the holder of a license issued for the Flathead project under the Federal Power Act;

(i) *two* ex officio *members* who shall be the director of the department of health and environmental sciences *and the director of the department of fish, wildlife, and parks* or *their designees.*

(3) The commissioners shall serve without pay. Commissioners mentioned in subsection (2)(a), except the commissioner on the governor's staff,

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are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the governor's office for administrative purposes only."

Approved March 20, 1989.

# CHAPTER NO. 177

[HB 183]

AN ACT INCREASING THE TIME LIMIT FOR PRESENTATION OF THE ANNUAL COUNTY FINANCIAL STATEMENT TO THE BOARD OF COUNTY COMMISSIONERS; AMENDING SECTION 7-6-2203, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-2203, MCA, is amended to read:

"**7-6-2203. Annual financial statement.** (1) Within *120* days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the department of commerce a complete statement of the financial condition of the county. The statement must show:

(a) a detailed description of all of the resources and liabilities of the county and the book value of them;

(b) the amount of money received, showing the source of that revenue;

(c) the amount of money disbursed, with the purpose of disbursement;

(d) the operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(e) the assessed valuation of the real and personal property of the county;

(f) the rate of taxation and the amount of taxes delinquent for the preceding years; and

(g) such other items as the department of commerce may prescribe.

(2) The statement shall be made out on the form designated by the department."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved March 20, 1989.

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# CHAPTER NO. 178

[SB 115]

AN ACT CREATING A REVERSE ANNUITY MORTGAGE LOAN PROGRAM; AND AUTHORIZING THE BOARD OF HOUSING TO MAKE REVERSE ANNUITY MORTGAGE LOANS.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants the board of housing authority to adopt rules to secure, implement, and administer a reverse annuity mortgage loan program to be utilized by elderly Montanans. The legislature intends that the rules adopted by the board recognize the necessity for some elderly Montanans to draw income for essential living expenses and other purposes from the equity accumulated in their single-family homes during their lifetimes while continuing to enjoy the shelter and security afforded by those residences. The rules must afford the elderly homeowner monthly payments over 10 years, as provided in the loan agreement, under terms that assure life tenancy and the right to repay the loan balance at any time. The rules must be consistent with other statutory or regulatory provisions requiring sufficient security for a loan provided by the board. The rules must prescribe forms and procedures necessary to apply for and receive reverse annuity mortgages.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Reverse Annuity Mortgage Loan Act".

Section 2. **Purpose.** Many elderly citizens in Montana own their own homes and have little or no remaining mortgage debt. Many of these homeowners are persons of lower income who would benefit from an additional income source from the use of the equity in their homes. The legislature finds that reverse annuity mortgage loans would enable elderly homeowners to provide more substantially for their own in-home support and specialized care. The purpose of [this act] is to:

(1) establish a reverse annuity mortgage loan program within the board of housing;

(2) authorize the board to make reverse annuity mortgage loans;

(3) counsel, assist, and protect elderly homeowners who wish to obtain a reverse annuity mortgage loan; and

(4) administer a reverse annuity mortgage loan program that does not jeopardize the mortgagor's eligibility for medicaid and other means-tested programs.

Section 3. **Definitions.** As used in [this act], unless the context requires otherwise, the following terms apply:

(1) "Mortgage" means a mortgage as defined in 90-6-103.

(2) "Mortgagee" means the holder of a mortgage or its assignee.

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(3) "Mortgagor" means a person:

(a) of lower income as determined by the board. In its determination of lower income, the board shall take into consideration the criteria in 90-6-103(16).

(b) 68 years of age or older;

(c) who is the owner and occupant of a single-family dwelling that is unencumbered by any prior mortgage, lien, or pledge; and

(d) who has completed a reverse annuity mortgage counseling program approved by the board.

(4) "Reverse annuity mortgage loan" means a loan in which loan proceeds are advanced to the mortgagor to provide a monthly tax-free cash payment for 10 years.

(5) "Single-family dwelling" means a one- to four-family living unit, excluding a condominium as defined in 70-23-102.

Section 4. **Reverse annuity mortgage loan program.** The board may make reverse annuity mortgage loans that are secured by a single-family dwelling located in this state. The loans must be made under terms and conditions adopted by the board pursuant to its authority under 90-6-104.

Section 5. **Repayment or termination of reverse annuity mortgage loan.** (1) The mortgagor shall repay the reverse annuity mortgage loan as provided in this section.

(2) Repayment of any part of the reverse annuity mortgage loan is not required prior to the maturity of the loan and while the mortgagor resides on the secured property. The mortgagor may pay the outstanding loan balance in full at any time without penalty.

(3) The reverse annuity mortgage loan matures, advances under a reverse annuity mortgage loan terminate, and the entire unpaid balance of the loan plus accrued interest becomes due and payable only upon the occurrence of any of the following events:

(a) the death of the last surviving mortgagor;

(b) the sale or other transfer of the secured property to a person other than any of the original mortgagors;

(c) vacation of the secured property by the mortgagor, whether voluntarily, involuntarily, or pursuant to legal process; or

(d) any other occurrence that materially decreases the value of the property securing the loan or that will have the likely effect of causing the loan to not be repaid.

(4) Any occurrence allowing the termination of a loan as provided in subsection (3)(d) must be clearly recited in the mortgage, deed of trust, or trust indenture.

(5) Payment of the reverse annuity mortgage loan may not be required from any source other than the secured property.

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Section 6. **Mortgage requirements.** (1) Any mortgage securing payments made by a mortgagee to a mortgagor pursuant to a reverse annuity mortgage loan must be sufficiently definite, certain, and valid to secure all money actually advanced pursuant to and in accordance with its terms. The mortgage must secure money advanced at or subsequent to closing of the loan, up to but not exceeding the full amount of the loan. A reverse annuity mortgage has the same priority as if all money had been advanced at the time the mortgage was delivered. The mortgage must include but not be limited to the following:

(a) a statement that it is a reverse annuity mortgage loan;

(b) the full amount of the loan authorized;

(c) a statement of the dates on which advancements are to be made and the amounts of such advancements; and

(d) the events that will give rise to the maturity of the loan.

(2) The mortgagee and the mortgagor may modify the advancement dates in the mortgage by a statement signed by all parties to the mortgage and properly recorded with the original mortgage instrument. The modification may not limit or otherwise affect the priority of the mortgage.

Section 7. **Rulemaking authority.** The board shall adopt all procedural and substantive rules necessary for the administration of [this act], including rules required to secure, implement, and administer the reverse annuity mortgage loan program.

Section 8. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 7].

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 20, 1989.

# CHAPTER NO. 179

[SB 175]

AN ACT TO PROVIDE A PROCEDURE TO ENABLE A PERSON HARMED BY THE UNLAWFUL CONDUCT OF A LICENSED MOTOR VEHICLE DEALER TO TAKE ACTION AGAINST THE DEALER'S REQUIRED BOND; AND AMENDING SECTION 61-4-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-4-101, MCA, is amended to read:

**"61-4-101. Application for dealer's license.** (1) Every person, firm, corporation, or association which, for commission or profit, engages in the

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business of buying, selling, exchanging, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 shall file, by mail or otherwise, in the office of the department a verified application for licensure as a dealer, on a blank to be furnished by the department for that purpose and containing the information required. The application and all of the information contained in it shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee specified *in 61-4-102.* A dealer's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department prior to the expiration of the license, the dealer may operate his business and display dealer plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates or as a recreational vehicle, trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates or as a motorcycle or quadricycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

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(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet indicating the firm name as the principal place of business and that vehicles are offered for sale; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license must also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) To qualify for a used motor vehicle dealer's license, a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(d) The provisions of subsection (2)(c) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) *(a)* The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond *must* be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds *must* run to the state of Montana and *must* be approved by the department and filed in its office and *must* be renewed annually.

*(b) A person who suffers loss or damage due to the unlawful conduct of a dealer licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting the judgment from the department. The department is responsible for payment under this section, in an amount not to exceed the maximum bond amount, only if the judgment on which the payment is based determines a specific loss or damage amount and concludes that the dealer's unlawful operation caused the loss or damage."*

Approved March 20, 1989.

## CHAPTER NO. 180

[SB 150]

AN ACT TO GENERALLY REVISE THE ATTORNEY-IN-FACT EXEMPTION FROM REAL ESTATE BROKER AND SALESMAN LICENSE REQUIREMENTS; AND AMENDING SECTION 37-51-103, MCA.

WHEREAS, the Legislature of the State of Montana finds that there presently is an attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesman; and

WHEREAS, the Legislature of the State of Montana finds that there is a potential use of the attorney-in-fact exemption by certain persons on a

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regular or consistent basis, thereby allowing those persons to avoid license requirements and negating adequate safeguards to the public; and

WHEREAS, the Legislature of the State of Montana finds the present attorney-in-fact exemption is limited to one based on a special power of attorney; and

WHEREAS, the Legislature of the State of Montana finds that the attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesman should be expanded to include a general power of attorney.

THEREFORE, the Legislature of the State of Montana finds it appropriate to expand the attorney-in-fact exemption to include one based on a general power of attorney and to limit all attorney-in-fact exemptions to occasional use under circumstances in which it is reasonably certain that adequate safeguards to the public are maintained.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-51-103, MCA, is amended to read:

"**37-51-103. Exemptions.** A single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this chapter, however, shall not:

(1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor;

(2) apply to any person acting as attorney-in-fact under *a* duly executed *special or general* power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, *unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements*;

(3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law;

(4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by any such officer;

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(6) apply to public officials in the conduct of their official duties;

(7) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

(8) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 181

[HB 190]

AN ACT TO GENERALLY REVISE CERTAIN PROVISIONS OF THE MONTANA PESTICIDES ACT; PROVIDING WHEN CERTAIN EXPENSES MAY BE INCLUDED IN EDUCATIONAL PROGRAM FEES; INCREASING CERTAIN REGISTRATION AND LICENSING FEES; CLARIFYING APPLICATOR RESPONSIBILITY FOR OPERATORS; CLARIFYING GENERAL VIOLATIONS; AMENDING SECTIONS 80-8-109, 80-8-201, 80-8-203, 80-8-207, AND 80-8-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-8-109, MCA, is amended to read:

"**80-8-109. Educational programs.** (1) The department shall develop and conduct appropriate educational programs. The educational programs shall inform those individuals dealing in and applying pesticides as to correct methods of formulating, applying, storing, disposing of, handling, and transporting pesticides.

(2) In developing and administering such programs, the department may consult other state and federal agencies and private industry, as well as such other persons it considers necessary, and may charge a fee for the programs commensurate with their administration costs. The fee may not include the salary or travel expenses of any employee of *a* state *agency* or of the Montana *cooperative extension service.*

(3) All fees collected pursuant to this section must be deposited in the state treasury to the credit of the state special revenue fund and must be spent for the purposes set forth in this section."

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Section 2. Section 80-8-201, MCA, is amended to read:

"**80-8-201. Registration.** (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state shall be registered with the department. The registration shall be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for the registration of pesticides and has been registered under the provisions of a federal act shall be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of *$75* for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit. Fees collected shall be deposited in the state treasury to the credit of the general fund.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of 80-8-202, it shall register the article.

(6) If it does not appear to the department that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify

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the applicant of the manner in which the article, labeling, or other material required to be submitted fails to comply with the chapter so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the article. The department may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this chapter or whenever scientific evidence proves that the article endangers man or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of *$75* for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder. The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish, wildlife, and parks are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall issue the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture.

(9) Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration

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are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. If the federal cancellation allows existing stock to be used past the final date of cancellation, such sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of such products to insure their proper disposal, relabeling, or removal."

Section 3. Section 80-8-203, MCA, is amended to read:

**"80-8-203. Commercial applicator.** (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of *$45*. Applicators applying for a dealer's license under this chapter shall be required to pay only a $20 licensing fee for the dealer's license. The provisions of this subsection shall not apply to any person employed only to operate any equipment used for the application of any pesticide and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided for under 80-8-205.

(3) Veterinarians licensed as provided in Title 37, chapter 18, part 3, shall not be required to be licensed to apply nonrestricted pesticides, provided that these veterinarians shall register with the department each year; provided further that the veterinarians shall be required to meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

*(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment."*

Section 4. Section 80-8-207, MCA, is amended to read:

**"80-8-207. Dealers.** (1) It is unlawful for any person to sell, offer for sale, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer shall not be required to obtain a license. The dealer shall furnish the department the names and addresses of its fieldmen and salesmen selling pesticides within the state.

(2) The application for a license shall be accompanied by a fee of *$45*. Dealers applying for renewal of license shall do so on or before March 1 of that calendar year. Any dealer applying for renewal of license after March 1 shall be assessed a $25 late licensing fee.

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(3) The dealer shall require the purchaser of any restricted pesticide to exhibit his license or permit issued under authority of this chapter before completing a sale.

(4) Dealers may make one application for two annual licenses if the application is accompanied by a *$45* licensing fee for each year of the state biennium.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Section 5. Section 80-8-305, MCA, is amended to read:

**"80-8-305. General violations.** (1) It is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand;

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102; *or*

*(e) to use any unregistered chemical or biological agent that is required to be registered as a pesticide by the Montana Pesticides Act.*

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or byproduct thereof in such a manner that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this

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act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Approved March 20, 1989.

# CHAPTER NO. 182

[HB 360]

AN ACT ESTABLISHING THE MONTANA MINT COMMITTEE UNDER THE ADMINISTRATION OF THE DEPARTMENT OF AGRICULTURE; PROVIDING FOR THE MAKEUP AND COMPENSATION OF THE MINT COMMITTEE; PROVIDING FOR AN INTEGRATED PEST MANAGEMENT PROGRAM FOR THE CONTROL AND MONITORING OF MINT DISEASES AND PESTS; ASSESSING MONTANA MINT GROWERS ON THE AMOUNT OF MINT OIL SOLD; ESTABLISHING THE MINT ACCOUNT IN THE SPECIAL REVENUE FUND; ESTABLISHING LICENSURE FOR MINT OIL PURCHASERS; PROVIDING PENALTIES; EXEMPTING THIS ACT FROM THE PROVISIONS OF THE SUNRISE LAW; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required because this bill grants to the Montana mint committee the authority to adopt rules to implement the provisions of the bill. At a minimum, it is intended that the rules address:

(1) general rules and orders for the exercise of power and performance of duties of the mint committee in accordance with the Montana Administrative Procedure Act;

(2) implementation of the integrated pest management program established in [section 7];

(3) the form of sworn statements and invoices required of purchasers of mint oil;

(4) the manner of collection of assessments on mint oil produced in Montana;

(5) recordkeeping and licensure required of mint oil purchasers; and

(6) any other topics necessary for the proper implementation of this bill.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Montana mint committee — composition — allocation.** (1) There is a Montana mint committee composed of five members. The members include the director of the department of agriculture and four members appointed by the governor.

(2) Each of the four appointed members must be a citizen of Montana who is actively involved in the growing of mint in this state. The qualifications of members must continue during their terms of office.

(3) A list of nominees for appointment must be submitted to the governor by Montana associations representing mint growers. Names of nominees must be submitted at least 91 days before the expiration of a committee member's term. The governor shall appoint members from among the persons nominated.

(4) Appointed members shall serve staggered terms of 3 years. Initial appointment must be as follows:

(a) one member for a 1-year term;

(b) two members for 2-year terms; and

(c) one member for a 3-year term.

(5) The committee is allocated to the department of agriculture for administrative purposes only as prescribed in 2-15-121.

Section 2. **Findings — purpose.** (1) The legislature finds that:

(a) It is in the best interest of the people of Montana that the abundant natural resources of the state be protected, fully developed, and uniformly distributed.

(b) Plant and pest diseases threaten the mint oil industry in Montana because of a lack of regulatory enforcement capability.

(c) It is in the interest of the people and to the benefit of the general welfare of the state that avoidable economic waste be eliminated as a result of mint growers having at their disposal all available information on the best and most advanced methods of culture, growing, and harvesting mint and controlling mint diseases and pests.

(2) The purpose of this part is to promote the general welfare of the people of Montana by:

(a) improving the culture and production of mint grown in this state;

(b) developing and improving control measures for diseases and pests that attack mint in order to maintain disease-free Montana mint; and

(c) disseminating appropriate information to Montana mint growers.

Section 3. **Definitions.** As used in this part, the following definitions apply:

(1) "Committee" means the Montana mint committee established in [section 1].

(2) "First purchaser" means a person, partnership, association, cooperative, or other business unit or device that first buys mint oil for subsequent sale or that acts as a sales or purchasing agent, broker, or factor of mint. The term includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against a grower, where the actual or constructive

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possession of mint oil is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.

(3) "Grower" means a landowner who is personally engaged in growing mint, a tenant who is personally engaged in growing mint, or both the landowner and tenant jointly, and includes a person, partnership, association, corporation, trust, sharecropper, or other business unit, device, or arrangement that grows mint.

(4) "Sale" means any pledge or mortgage of mint oil to any person, public or private.

Section 4. **Powers of the committee.** The committee may:

(1) provide for the administration and enforcement of this part;

(2) enter into contracts, in the name of the committee, to:

(a) improve the quality of mint;

(b) develop and improve control measures for diseases and pests that attack mint;

(c) improve mint growing culture;

(d) disseminate appropriate information among mint growers and dealers of the state; and

(e) carry out the purposes of this part;

(3) authorize the purchase of office equipment and supplies and incur other reasonable and necessary expenses and obligations required to carry out this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) adopt rules and orders for the exercise of its power and the performance of its duties in accordance with the Montana Administrative Procedure Act;

(6) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States, engaged in work or activities similar to the work and activities of the committee and enter into contracts with those organizations or agencies for conducting joint campaigns of research, education, disease control, product protection, and reciprocal enforcement of objectives;

(7) accept grants, donations, and gifts from any source for expenditure for any purpose consistent with this part and spend the proceeds in compliance with the conditions of the grants, donations, and gifts; and

(8) establish an integrated pest management program, complete with field scouting services, as provided in [section 7].

Section 5. **Compensation — per diem.** Each committee member is entitled to $25 compensation for each day he is engaged in the transaction

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of official business, together with actual and necessary travel expenses as provided for in 2-18-501 through 2-18-503.

Section 6. **Election of chairman — time of meetings.** At the first meeting of the committee, it shall elect a chairman from among its members. The committee shall meet at least once annually and at such other times as called by the chairman or by any three members of the committee.

Section 7. **Integrated pest management program — field inspection services.** (1) The purpose of the integrated pest management program is to identify, as early as possible, any potentially damaging diseases, weeds, or pests that could inhibit the long-term future health of the Montana mint industry.

(2) Noxious weed counts, mint plant and soil-borne disease levels, and pest population levels must be provided by the committee on a regular basis to each grower for his individual farm.

(3) Two mandatory field inspections by a department-appointed consultant must be made annually. One inspection must be before harvest in an attempt to identify areas of verticillium wilt. One inspection must be after harvest to identify nematode damage.

Section 8. **Assessment on mint oil.** (1) There is levied on all mint oil produced in this state and sold through normal commercial channels an assessment of not less than 10 cents or more than 15 cents a pound. The assessment is levied on each grower in the following manner:

(a) in the case of the sale of mint oil, the assessment must be collected by the first purchaser from the grower at the time of each settlement for mint oil purchased; or

(b) in the case of a pledge or mortgage of mint oil as security for a loan, the assessment must be collected by deducting the amount of the assessment from the proceeds of the loan at the time the loan is made by the agency or person making the loan.

(2) The assessment must be deducted and collected whether the mint oil is stored in this state or any other state. The assessment is imposed on the initial sale, pledge, mortgage, or other transaction in which a grower parts with title to the mint oil or creates an interest in the mint oil in a pledgee, mortgagee, or other person, but a grower is not subject to assessment more than once regardless of the number of times the oil is subject to a sale, pledge, mortgage, or other transaction.

(3) The committee shall by rule set the amount of the assessment annually in accordance with subsection (1).

Section 9. **Buyer's delivery of invoice to grower — form.** The purchaser of mint oil at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give a separate invoice for each purchase to the grower. The invoice must be on forms approved by the committee and must contain:

(1) the name and address of the grower and seller;

(2) the name and address of the purchaser or the lender;

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(3) the number of pounds of mint oil sold, mortgaged, or pledged;

(4) the date of purchase, mortgage, or pledge; and

(5) the amount of the assessment collected and remitted to the committee.

Section 10. **Payment of assessment — sworn statement.** (1) The purchaser, mortgagor, or pledgee shall file with the committee, on forms prescribed by the committee, within 20 days after the end of a month in which mint oil is purchased, a sworn statement of the number of pounds of mint oil purchased in Montana or the number of pounds of mint oil mortgaged, transferred, or otherwise subject to a lien as security for a loan during the preceding calendar month. At the time the statement is filed, the purchaser or lender shall pay to the committee the assessment provided for in [section 8] for deposit in the mint account in the state special revenue fund.

(2) The sworn statement referred to in subsection (1) must be legible and free of corrections and alterations.

Section 11. **Mint account — sources — use — expenditures.** (1) There is an account in the state special revenue fund, known as the mint account. The following must be placed in the account:

(a) the proceeds of all assessments collected under this part; and

(b) the proceeds from all grants, gifts, or donations to the committee for research authorized under this part.

(2) The account must be maintained for the purposes of [sections 2 through 15] and is separate from all other accounts of the department.

(3) The committee may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the mint account.

Section 12. **Records required.** Every first purchaser of mint oil shall maintain accurate records of all mint oil handled, packed, shipped, or processed by him. The records must be in the form and contain the information the committee may by rule prescribe. The records must be preserved for 2 years and are subject to inspection at any time upon request of the committee or its agents.

Section 13. **Mint oil purchaser license — application — fee.** (1) Every person acting as a first purchaser shall annually file a written application with the committee for a license. The application must include:

(a) the applicant's name;

(b) the applicant's principal business addresses, both within and outside Montana;

(c) the name of a person authorized to receive service of summons and legal notices of all kinds for the applicant; and

(d) any other information the committee may require.

(2) Each application must be accompanied by a license fee of $50. A license is valid for the calendar year in which it is issued.

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(3) A license must be issued if the committee is satisfied that the applicant is of good character and reputation and is financially responsible.

Section 14. **Penalty for nonpayment of assessment.** Any grower or first purchaser of mint oil who fails to make collection or pay an assessment within the time required pursuant to this part is subject to a penalty of 5% of the amount of the assessment determined to be due as provided in this part, plus 1% of that amount for each month of delay, or fraction thereof, after the expiration of the month after the assessment became due. The penalty must be paid to the committee and disposed of as provided in [section 11].

Section 15. **Penalty.** In addition to the penalty specified in [section 14], any person who violates or aids in the violation of any of the provisions of this part or any rules or orders of the committee adopted under this part is punishable upon conviction by a fine not to exceed $500. All fines collected must be deposited as provided in [section 11].

Section 16. **Sunrise exemption.** The provisions of Title 2, chapter 8, part 2, do not apply to [this act].

Section 17. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 18. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 30, and the provisions of Title 2, chapter 15, part 30, apply to [section 1].

(2) [Sections 2 through 15] are intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [sections 2 through 15].

Section 19. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Effective date.** [This act] is effective July 1, 1989.

Approved March 20, 1989.

# CHAPTER NO. 183

[SB 57]

AN ACT AMENDING THE CUSTOM COMBINER'S SPECIAL PERMIT FEE; MAKING PURCHASE OF A SPECIAL PERMIT DISCRETIONARY FOR NONRESIDENTS; INCLUDING OVERLENGTH VEHICLES IN THE SPECIAL PERMIT; ESTABLISHING OVERWEIGHT TOLERANCES FOR CERTAIN VEHICLES INCLUDED IN THE SPECIAL PERMIT; REVISING THE PENALTY; AMENDING SECTION 15-24-1001, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

This bill requires a statement of intent because [subsection (8) of section 1] authorizes the department of highways to adopt administrative rules to

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implement the act. The act is intended to provide a special permit fee for the vehicles and equipment of custom combiners operating in the state, in lieu of the usual vehicle license fees and gross vehicle weight, overwidth, overlength, and overheight fees otherwise required. The custom combiner has the option of paying the regular fees.

The act also permits the use of the custom combiner's truck or trailer to haul grain, but only from the field to the point of first unloading, within certain limitations. This authority is given so that the combiner may assist the producer in getting the harvested grain out of the field and is not intended to allow transportation of the grain in commerce.

It is the intent of the legislature that the department of highways adopt necessary rules to implement the custom combiner's special permit and to regulate the operation of the vehicles involved in conformity with the act and special permit requirements.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-24-1001, MCA, is amended to read:

**"15-24-1001. Custom combiner's special permit — fee — collection — distribution — not transferable.** (1) In lieu of the taxes required by 15-24-301 and in lieu of motor vehicle license fees, gross vehicle weight fees, and overwidth, *overlength,* and overheight permits provided for in Title 61, a nonresident engaged in the business of custom combining who brings equipment into the state *may* pay a *special permit* fee of $40 per unit. A unit shall include:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks and all other equipment, except combines, used by a nonresident and brought into the state as part of his business of custom combining.

(2) In lieu of gross vehicle weight fees and overwidth, *overlength,* and overheight permits, Montana residents engaged in the business of custom combining may pay the annual farm gross vehicle weight fees and a *special permit* fee of $20 per unit. A unit includes:

(a) one truck suitable for hauling grain;

(b) one header trailer or one combine trailer; and

(c) pickup trucks used by the resident in his business of custom combining.

*(3) When used to transport agricultural products, a truck authorized to be used under a custom combiner's special permit may be operated only within a 50-mile radius from the harvested field to the point of first unloading. The truck may not haul agricultural products from one commercial elevator to another commercial elevator. The truck may be operated on*

*any highway, except a highway that is part of the federal-aid interstate system, without incurring excess weight penalties under 61-10-145 if the total gross weight of the truck does not exceed allowable weight limitations by more than 20% per axle and the maximum load per inch of tire width does not exceed 670 pounds. The truck may not be operated in excess of 40 miles per hour. No trip permit is required. If the truck exceeds the tolerance provided under this subsection, the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.*

*(4) A combine trailer authorized to be used under subsections (1)(b) or (2)(b) may be operated under the same limitations and until July 1, 1991, may be operated within the same tolerances granted trucks under subsection (3), except that the 50-mile limitation does not apply and the combine trailer may be used upon any highway of the state, including a highway that is part of the federal-aid interstate system. If the combine trailer exceeds the tolerance provided under subsection (3), the fine or penalty imposed applies to all weight over the legal limit allowed by 61-10-107.*

*(5)* The fee required by this section must be collected by the department of highways. Upon payment of the fee, the department of highways must provide an identifying device to be displayed on each truck, header trailer, or combine trailer and other equipment used by the nonresident or resident in his business of custom combining in the state, which device is valid for the calendar year in which the fee is collected.

*(6)* All fees collected under this section must be distributed not later than January 31 immediately following the period of license as follows: 62 ½% to the county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate, 37 ½% to the state special revenue fund for the department of highways.

*(7)* The identifying devices and fee paid for each unit are not transferable from one vehicle to another or transferable on the sale or change of ownership.

*(8) The department of highways may adopt rules, as provided in Title 2, chapter 4, to implement the provisions of this section."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** Section 15-24-1001 is intended to be renumbered and codified by the code commissioner as an integral part of Title 61, chapter 10, part 1, and the provisions of Title 61, chapter 10, part 1, apply to 15-24-1001.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

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# CHAPTER NO. 184

[HB 155]

AN ACT TO PROVIDE THAT A WORKERS' COMPENSATION INSURER IS NOT LIABLE FOR BENEFITS ON AN EXISTING CLAIM TO AN EMPLOYEE WHO SUFFERS A NONWORK-RELATED INJURY TO A PREVIOUSLY INJURED PART OF THE BODY IF THE EMPLOYEE PREVIOUSLY REACHED MAXIMUM HEALING; AND AMENDING SECTION 39-71-407, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-407, MCA, is amended to read:

**"39-71-407. Liability of insurers — limitations.** (1) Every insurer is liable for the payment of compensation, in the manner and to the extent hereinafter provided, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in 39-71-119 if the claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that such claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole and exclusive cause of the injury or death. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

*(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury."*

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Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 185

[HB 487]

AN ACT PROVIDING FOR THE STORAGE AND REPRODUCTION OF CERTAIN STATE RECORDS ACCORDING TO RULES ADOPTED BY THE SECRETARY OF STATE; AND AMENDING SECTIONS 2-6-111, 30-9-403, AND 30-9-404, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it permits the secretary of state to establish by rule methods for archiving documents filed in his office. Because the technology for archiving documents is developing quickly, it is necessary to provide the secretary of state with the flexibility for establishing the method of archiving.

The legislature intends that the rules require the storage of records in a manner that allows the retrieval of clear and accurate duplicates of the original document. The process must be quick and efficient for both reproducing the original and retrieving the duplicate. The process must have adequate safeguards to ensure that the stored documents will be preserved for many years.

The legislature intends that the rules permit the use of appropriate technology that meets these requirements. The rules must allow for the use of microfilm, photostatic or microphotographic means, computerized electronic disc, or other new technologies that may be developed. These rules may permit storage systems that allow public access through computer hookups as long as no person is able to tamper with the stored records.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-6-111, MCA, is amended to read:

**"2-6-111. Custody and reproduction of records by secretary of state.** (1) The secretary of state is charged with the custody of:

(a) the enrolled copy of the constitution;

(b) all the acts and resolutions passed by the legislature;

(c) the journals of the legislature;

(d) the great seal;

(e) all books, records, parchments, maps, and papers kept or deposited in his office pursuant to law.

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(2) All records included in subsection (1) may be kept and *reproduced* in accordance with *rules adopted by the secretary of state in consultation with the state records committee provided for in 2-15-1013.*

(3) The state records committee created by 2-15-1013 may approve the disposal of original records once those records are reproduced as provided for in subsection (2), unless disposal takes the form of transfer of records; in that case, reproduction will not be necessary. The reproduction, or certified copy *of a record* may be used in place of the original for all purposes, including as evidence in any court or proceeding, and *has* the same force and effect as the original record.

(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever their production is required by law.

(5) At least two copies shall be made of all records reproduced as provided for in subsection (2). The secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in his office with suitable equipment for displaying *a* record by projection to not less than its original size and for preparing, for persons entitled thereto, copies of the record.

(6) All duplicates of all records shall be identified and indexed."

Section 2. Section 30-9-403, MCA, is amended to read:

**"30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in subsections (6) and (11), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which

the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record *or a record produced according to rules adopted by the secretary of state*, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. *The filing officer* shall hold the statement or a microfilm or other photographic copy *or a copy produced according to rules adopted by the secretary of state* for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be set pursuant to subsection (13).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within one working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in

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the statement on a centralized computer system that he shall establish. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

(11) When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.

(12) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(13) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit in a state special revenue fund in the state treasury all fees he collects, and the fee money may be paid out of the treasury only on appropriation made by the legislature as provided in 17-8-101. Any fee money collected under this part and remaining in the state treasury after all current fiscal year expenditures are met must be transferred to the general fund. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 3. Section 30-9-404, MCA, is amended to read:

**"30-9-404. Termination statement.** (1) If a financing statement covering consumer goods is filed on or after October 1, 1983, then within 1 month or within 10 days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security

interest under the financing statement, which shall be identified by file number. In other cases, whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with 30-9-405(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection or to send such a termination statement within 10 days after proper demand therefor, he shall be liable to the debtor for $100, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement, he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party, stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record *or a record produced according to rules adopted by the secretary of state* of the financing statement and of any related continuation statement, statement of assignment, and statement of release, he may remove the originals from the files at any time after receipt of the termination statement. *If* he has no such record, he may remove them from the files at any time after 1 year after receipt of the termination statement.

(3) The uniform fee for filing and indexing the termination statement shall be set pursuant to 30-9-403."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 186

[SB 181]

AN ACT TO SIMPLIFY THE PREMARITAL SEROLOGY TEST REQUIREMENTS BY CHANGING THE CONTENT AND SIGNATURE OF THE MEDICAL CERTIFICATE AND DISTRIBUTION OF CERTIFICATE FORMS AND BY ELIMINATING THE REQUIREMENT THAT THE TEST BE PERFORMED NO MORE THAN 6 MONTHS BEFORE THE ISSUANCE OF A MARRIAGE LICENSE; AND AMENDING SECTIONS 40-1-203 THROUGH 40-1-205 AND 40-1-208, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-1-203, MCA, is amended to read:

**"40-1-203. Proof of age and medical certificate required.** (1) Before a person authorized by law to issue marriage licenses may issue a

marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of health and environmental sciences, shall file with the license issuer a medical certificate from a physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by *rule of the department* to make a medical certificate. The certificate shall state that the applicant has been given a standard serological test and that the report of the results of the serological test has been exhibited to the applicant tested and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test."

Section 2. Section 40-1-204, MCA, is amended to read:

**"40-1-204. Contents and form of medical certificate.** (1) The medical certificate shall contain a statement from *a physician* or *other person* authorized *by rule of the department of health and environmental sciences* to make such reports, setting forth:

(a) the name of the test;

*(b)* the name and address of the physician or other person authorized *by rule of the department to sign the certificate*;

*(c) the name and address of the laboratory performing* the test; and

*(d)* the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) (a) The certificate and statement shall be on a form to be provided and distributed, *upon request*, by the department of health and environmental sciences.

(b) This form is hereinafter referred to in 40-1-205 through 40-1-209 as the "certificate form"."

Section 3. Section 40-1-205, MCA, is amended to read:

**"40-1-205. Certificates from other states or for military personnel — when acceptable.** Certificate forms provided by other states having comparable laws will be accepted for persons who have received a standard serological test outside of Montana. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard serological tests."

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Section 4. Section 40-1-208, MCA, is amended to read:

**"40-1-208. Penalties.** (1) An applicant for a marriage license, a physician or other person authorized by *rule of the department of health and environmental sciences* to make a medical certificate, or any person in charge of or authorized to make reports or statements for a laboratory who misrepresents his identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges such information or opens to inspection such certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 187

[SB 176]

AN ACT TO IMPOSE A $25 PENALTY FOR LATE PAYMENT OF STATE AGRICULTURAL AND GRAZING LEASE RENTALS; AND AMENDING SECTION 77-6-506, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-6-506, MCA, is amended to read:

**"77-6-506. Date when rental due — penalty — cancellation for nonpayment.** (1) For grazing leases, the grazing portion of leases containing both agricultural and grazing land, and agricultural leases not based on a crop share, the rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1. *If the rental is not paid before March 1, a $25 penalty*

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*shall be imposed on the lessee. If the full rental and the $25 penalty are* not paid by April 1, the entire lease is canceled.

(2) For agricultural leases and the agricultural portion of leases containing both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, the rental is due in cash on or before November 15 of the year in which the crop is harvested. *If the rental is not paid on or before November 15 of the year of crop harvest, a $25 penalty shall be imposed on the lessee.* If the *full* rental *and the $25 penalty are* not paid on or before December 31 of the year in which the crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the lessee does not make the rental payment by the date of extension, the entire lease is canceled. *Any rental payment made after November 15 of the year in which the crop is harvested, including payment made after an extension of the deadline, must include the $25 penalty.*

(3) At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is canceled if payment *and the $25 penalty are* not received by the final deadline. The notice shall be sent to the lessee at the address given in the lease.

(4) When a lease is canceled under subsection (1) or (2), the department shall notify the lessee of the cancellation by letter at the address given in the lease. The land is then open for lease to applicants.

*(5) The penalties collected pursuant to this section must be deposited into the same trust account as the rentals from the state land to which the penalties apply."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 188

[SB 258]

AN ACT GENERALLY REVISING PROVISIONS REGARDING GRANTING OF PAROLE; PROVIDING THAT DECISIONS OF THE BOARD OF PARDONS ARE NOT REVIEWABLE; MAKING PAROLE RELEASE DISCRETIONARY, RATHER THAN MANDATORY, IF CERTAIN STATUTORY CRITERIA ARE MET; CLARIFYING PROVISIONS REGARDING GRANTING OF PAROLE TO A PRISONER WHO COMMITS A NEW CRIME; AMENDING SECTIONS 46-23-107, 46-23-201, AND 46-23-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-23-107, MCA, is amended to read:

**"46-23-107. Orders of board — reviewability.** Decisions of the board *must* be by majority vote. The orders of the board are not reviewable."

Section 2. Section 46-23-201, MCA, is amended to read:

**"46-23-201. Prisoners eligible for parole.** (1) Subject to the restrictions *contained in subsections (2) through (4)*, the board *may* release on parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

*(2)* A convict serving a time sentence may *not* be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

*(3)* A convict serving a life sentence may *not* be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

*(4)* A parole *may* be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner *may* be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

*(5)* If the department of institutions certifies to the board that the population at the Montana state prison exceeds its design capacity of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than 30 days, the board shall consider convicts in the institution in which the design capacity has been exceeded eligible for parole 120 days prior to the eligibility date provided for in *subsections (2) and (3).*

*(6)* Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection *(5)* do not apply."

Section 3. Section 46-23-217, MCA, is amended to read:

**"46-23-217. Service of term for additional crime.** A prisoner who commits a crime while *imprisoned in the state prison or while released* on parole or *under the supervised* release *program* and who is convicted and sentenced *for the crime* shall serve *the* sentence consecutively with the remainder of the original sentence as provided in 46-18-401. *However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence as provided in 46-18-401.*"

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

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# CHAPTER NO. 189

[SB 213]

AN ACT INCREASING THE ALLOWABLE SEED OR GRAIN LIEN TO AN AMOUNT EQUAL TO THE PURCHASE PRICE OF THE SEED OR GRAIN; AMENDING SECTION 71-3-701, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-3-701, MCA, is amended to read:

**"71-3-701. Lien for seed or grain.** Any person, company, association, or corporation who *furnishes* to another seed to be sown or planted or funds or means with which to purchase seed to be sown or planted or to be used in the production or cultivation of a crop or crops on the lands owned or contracted to be purchased, used, leased, occupied, or rented by him or held under government entry, upon filing the statement provided for in 71-3-703, *has* a lien not exceeding the purchase price of *the seed or grain furnished* upon the crop produced from the seed or grain furnished, or any part thereof, and upon the seed or grain threshed from *the* crop to secure the payment of the amount or the value of the seed or grain furnished or the funds or means advanced to purchase the *seed or grain.*"

Approved March 20, 1989.

# CHAPTER NO. 190

[SB 29]

AN ACT AUTHORIZING THE BOARD OF OIL AND GAS CONSERVATION TO ADOPT RULES REGULATING THE PLUGGING AND ABANDONMENT OF SEISMIC SHOT HOLES; AMENDING SECTION 82-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide further guidance to the board of oil and gas conservation on the content of rules addressing plugging and abandonment of seismic shot holes. The rules should describe:

(1) plugging requirements, which may vary with geologic conditions; and

(2) surface restoration requirements around the seismic shot hole.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-1-101, MCA, is amended to read:

**"82-1-101. Persons required to comply.** (1) A person, firm, or corporation operating individually or through agents within the state of Montana for the purpose of seismic exploration in which exploration entry is

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made upon the surface estate for the acquisition of geophysical data for any purpose whatsoever, and which person, firm, or corporation either through its own employees or by hiring the services of others operates "seismograph crews", as the term is generally known, shall comply with the following provisions of this part; provided, however, that compliance with the provisions of this part by a seismograph crew or its employer shall constitute compliance herewith by that person, firm, or corporation who has engaged the services of such crew or its employer as an independent contractor insofar as the geophysical operations of such crew are concerned.

(2) The board of oil and gas conservation shall adopt rules:

*(a)* requiring adequate identification of seismic exploration crews operating in this state;

*(b)* designating areas where seismic exploration and activities may not be allowed; *and*

*(c) regulating the plugging and abandonment of seismic shot holes.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

# CHAPTER NO. 191

[SB 364]

AN ACT TO REQUIRE INSURERS TO GIVE NOTICE OF CANCELLATION OR REFUSAL TO RENEW A DISABILITY INSURANCE POLICY FOR REASONS OTHER THAN NONPAYMENT OF PREMIUMS; AND AMENDING SECTION 33-22-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-22-121, MCA, is amended to read:

"**33-22-121. Notice required for cancellation or refusal to renew.** *(1) An* insurer may *not* cancel *or refuse to renew* a disability insurance policy until the insurer has mailed or delivered to the named insured and *to the* policyowner, *if* they are not the same, at the last-known post office address shown in the records of the company, one written notice in addition to any billing statement, stating the date the cancellation *or refusal to renew* will become effective, which may not be less than:

*(a)* 30 days after the date of mailing or delivery of the notice *of cancellation for nonpayment of premiums or a material misrepresentation contained in the application; or*

*(b) 90 days after the date of mailing or delivery of the notice of cancellation or refusal to renew for any reason other than nonpayment of premiums or a material misrepresentation contained in the application.*

*(2) The notice requirements in subsection (1)* run concurrently with any grace period required by 33-22-206."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 192

[SB 233]

AN ACT AUTHORIZING PARIMUTUEL BETTING ON MULE RACES; PROVIDING FOR REGULATION OF MULE RACES BY THE BOARD OF HORSERACING; AMENDING SECTIONS 23-4-101, 23-4-104 THROUGH 23-4-106, AND 23-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-4-101, MCA, is amended to read:

**"23-4-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(4) "Minor" means a person under 18 years of age.

(5) "Persons" means individuals, firms, corporations, fair boards, and associations.

(6) "Race meet" means racing of registered horses *or mules* where the parimutuel system of wagering is used.

(7) "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

(8) "Board of stewards" means a board composed of three stewards who supervise *race* meets."

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Section 2. Section 23-4-104, MCA, is amended to read:

"**23-4-104. Duties of board.** The board shall adopt rules to govern *race* meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state;

(8) the veterinary practices and standards which must be observed in connection with race meets;

(9) absolute responsibility of trainers for the condition of horses *and mules*, regardless of the acts of third parties;

(10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction; and

(11) setting license fees commensurate with the cost of issuing a license."

Section 3. Section 23-4-105, MCA, is amended to read:

"**23-4-105. Authority of board.** The board shall, subject to 37-1-101 and 37-1-121, license and regulate *racing* and review race meets held in this state under this chapter. If the board decides to authorize new forms of racing not currently engaged in in Montana, it shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board should consider both economic and safety impacts on the existing racing and breeding industry."

Section 4. Section 23-4-106, MCA, is amended to read:

"**23-4-106. Executive secretary — powers and duties — staff — prohibition on racing activities.** (1) The department shall appoint an executive secretary for the board.

(2) The executive secretary, in accordance with rules adopted by the board and provisions of this chapter, shall:

(a) supervise race meets and activities of racing officials;

(b) hire all state racing officials for the department;

(c) inspect race facilities; and

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(d) perform other duties as directed by the board.

(3) The executive secretary may, subject to the approval of the board, hire staff to assist him in performing his duties.

(4) The executive secretary, a member of his staff, and any member of the executive secretary's or a staff member's immediate family are prohibited from owning, training, or having any interest in a racehorse *or mule* running on a Montana track or having any financial interest in any Montana racing association. No racing official hired by the department or approved by the board may wager at a *race* meet at which he presides."

Section 5. Section 23-4-304, MCA, is amended to read:

**"23-4-304. Gross receipts — department's percentage — collection and allocation.** (1) The licensee shall pay to the department 1% of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the department within 5 days after receipt by the licensee. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance shall be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all sums collected under 23-4-202(4)(d) on exotic wagering on races.

(2) At the end of the racing season, sums collected under 23-4-202(4)(d) must be distributed by the department, after first passing through the board's agency fund account, to the licensed owners of those Montana-bred horses *or mules* finishing in the money at the meet from which the sums derived. The owner's award must be calculated as follows:

(a) divide the total amount collected under 23-4-202(4)(d) by the total amount won by Montana-bred horses *or mules*;

(b) multiply the quotient derived under subsection (2)(a) by the total amount of money won by each owner's Montana-bred horses *or mules*.

(3) For purposes of the owner's award under subsection (2), "owner" means the individual, partnership, corporation, person, or other entity that owns the horse *or mule* at the time of entry.

(4) Licensees may not consider the sums available under 23-4-202(4)(d) when establishing purses."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

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# CHAPTER NO. 193

[SB 280]

AN ACT TO INCLUDE LOSS OF INCOME INSURANCE IN INSURANCE THAT CAN BE WRITTEN IN CONNECTION WITH CONSUMER LOANS; AND AMENDING SECTION 32-5-306, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-5-306, MCA, is amended to read:

**"32-5-306. Insurance.** (1) *Except as provided in this section,* insurance *may not* be written by a licensee or employee, affiliate, or associate of the licensee, in connection with any loan.

(2) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct business in Montana by a duly licensed agent or agency of this state. Premiums *may* not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) When the principal amount of the loan exceeds $300 exclusive of the portion *of the loan* attributable to insurance premiums and charges, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, *and loss of income insurance* may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds $300, exclusive of the portion *of the loan* attributable to insurance premiums and charges.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that *a* licensee *may not* require a borrower to purchase insurance from *the* licensee or from any particular agent, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section *may* not be *considered* to be additional charges or a violation of this chapter.

(6) A licensee *may* not require insurance under this section until any existing insurance of the same type has expired or has been canceled and

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the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

(7) The amount of $300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 20, 1989.

# CHAPTER NO. 194

[SB 40]

AN ACT PROVIDING OPTIONAL PUBLICATION REQUIREMENTS FOR THE ANNUAL STATEMENT OF THE FINANCIAL CONDITION OF A COUNTY; AND AMENDING SECTION 7-5-2123, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-5-2123, MCA, is amended to read:

**"7-5-2123. Publication of board proceedings and annual financial statement.** (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause to be published in a newspaper:

(a) at the adjournment of each session of the board, in full and complete detail or in summary form or by reference, with the full and complete text made available on request, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings;

(b) annually, the county clerk's annual statement of the financial condition of the county, *in full and complete detail or in summary form.*

(2) Publication in full, in summary, or by reference of such minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of the financial statement must be made within 30 days after the presentation of the same to the board. The board shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor."

Approved March 20, 1989.

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# CHAPTER NO. 195

[SB 324]

AN ACT PERMITTING A COURT TO CONDITIONALLY DISCHARGE A PROBATIONER FROM SUPERVISION BEFORE EXPIRATION OF HIS SENTENCE; PERMITTING THE BOARD OF PARDONS TO CONDITIONALLY DISCHARGE A PAROLEE FROM SUPERVISION BEFORE EXPIRATION OF HIS SENTENCE; AMENDING SECTIONS 46-23-1011 AND 46-23-1021, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-23-1011, MCA, is amended to read:

**"46-23-1011. Supervision on probation.** (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer, who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified, and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

*(6) (a) Upon recommendation of the probation and parole officer, a court may conditionally discharge a probationer from supervision before expiration of his sentence if the court determines that a conditional discharge from supervision is in the best interests of the probationer and society.*

*(b) Nothing in subsection (6)(a) prohibits a court from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision."*

Section 2. Section 46-23-1021, MCA, is amended to read:

**"46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

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(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer, who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, and inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

*(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of his sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society.*

*(b) Nothing in subsection (6)(a) prohibits the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision."*

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Applicability.** [This act] applies to persons under probation or parole supervision on or after [the effective date of this act].

Approved March 20, 1989.

# CHAPTER NO. 196

[HB 89]

AN ACT GENERALLY REVISING AND CLARIFYING THE PUBLIC EMPLOYEES' RETIREMENT LAWS; REVISING AND CLARIFYING PROVISIONS OF THE PUBLIC EMPLOYEES', JUDGES', HIGHWAY PATROLMEN'S, SHERIFFS', GAME WARDENS', MUNICIPAL POLICE OFFICERS', AND FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 19-3-512, 19-3-903, 19-3-905, 19-3-1201, 19-3-1204, 19-5-101, 19-6-501, 19-6-602, 19-7-101, 19-7-501, 19-7-602, 19-8-101, 19-8-601, 19-8-702, 19-9-801, 19-9-804, AND 19-13-701, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-3-512, MCA, is amended to read:

**"19-3-512. Qualification of service from other public retirement systems.** (1) A member with 5 or more years of creditable service in the public employees' retirement system may qualify:

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*(a)* public service employment covered under a public retirement system other than a system provided for in Title 19 for which he received a refund of his membership contribution*; and*

*(b) public service employment that occurred before the public employer adopted a public retirement system.*

*(2) A member may not qualify more than 5 years of service under this section.* To qualify this service, a member shall:

(a) at any time before his retirement make a written election with the board to qualify the service; and

(b) contribute to the retirement fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on:

(i) his compensation in his sixth year of service covered under the public employees' retirement system; and

(ii) the normal contribution rate according to the most recent actuarial valuation.

*(3)* Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.

*(4)* Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-3-503.

*(5)* Service qualified under this section may not be used in calculating a member's retirement allowance unless his last 5 years of creditable service were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating his retirement allowance, he may choose to:

(a) receive a refund of the contributions made to qualify the service; or

(b) apply the contributions made to qualify the service under the provisions of 19-3-702."

Section 2. Section 19-3-903, MCA, is amended to read:

**"19-3-903. Time of commencement of allowance.** *(1)* The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of 19-3-901 or 19-3-902, *terminated covered employment,* and filed the appropriate written application.

*(2) (a) Except as provided in subsections (2)(b) and (2)(c), the* retirement allowance *may* commence on the first day of the month following the member's last day of membership service *or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.*

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*(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 60th birthday.*

*(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of his term of office. An official electing this option may not earn service or salary credits in that month, and compensation earned in that month is not subject to employer or employee contributions.*"

Section 3. Section 19-3-905, MCA, is amended to read:

"**19-3-905. Adjustment of allowance for certain members.** The annual amount of retirement allowance payable to a member *following his service retirement must* be increased by the excess, if any, of the greater of (1) or (2), as follows, over 19-3-904(1)(b):

(1) the sum of a pension for prior service equal to one-sixtieth of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age 70 in service, the lesser of $480 or one-half of his final compensation."

Section 4. Section 19-3-1201, MCA, is amended to read:

"**19-3-1201. Eligibility for death benefits.** *Upon receipt of a written application filed with the board by a designated beneficiary, the* board shall grant a death benefit to the beneficiary of any member or former member who dies in any of the following statuses:

(1) while in service;

(2) within *6* months after the discontinuance of service but before retirement;

(3) while a recipient of a retirement allowance because of disability, if such allowance has been in effect less than *6* months;

(4) while disabled, as defined in 19-3-1001, if he has been continuously so disabled from the discontinuance of his service but is not receiving a retirement allowance because of the disability."

Section 5. Section 19-3-1204, MCA, is amended to read:

"**19-3-1204. Survivorship allowance elected by beneficiary.** (1) A beneficiary eligible to receive a death benefit may elect, by written application, a survivorship allowance instead, if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of creditable service.

(b) The beneficiary is a natural person.

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(c) The beneficiary elects the survivorship allowance within 90 days of receipt of notice from the board that he is eligible to receive the death benefit.

(2) *(a) If the beneficiary is a minor, the custodian designated in 19-3-1304 may, on the minor's behalf, file a written application with the board.*

*(b) If no application is filed on the minor's behalf, the beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (b), the survivorship allowance provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed.*"

Section 6. Section 19-5-101, MCA, is amended to read:

"**19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Beneficiary" means the person whom the contributor nominates by written designation, *witnessed* and filed with the board.

(4) "Board" means the public employees' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the fund standing to his credit.

(6) "Final salary" means the annual current salary for the office retired from.

(7) "Fund" means the Montana judges' retirement system pension trust fund.

(8) "Involuntary retirement" means a retirement not for cause and before retirement age.

(9) "Member's annuity" means payments for life derived from contributions made by the contributor.

*(10)* "Retired judge" means any judge or justice in receipt of a retirement allowance under this chapter.

*(11)* "Retirement allowance" means the state annuity plus the member's annuity.

*(12)* "State annuity" means payments for life derived from contributions made by the state of Montana."

Section 7. Section 19-6-501, MCA, is amended to read:

"**19-6-501. Eligibility and application for service retirement allowance — commencement of allowance.** (1) (a) A member first

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employed by the Montana highway patrol on or before July 1, 1985, is eligible to receive a service retirement allowance after completing 20 years or more of creditable service *and terminating covered employment.*

(b) A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement allowance when he has reached age 50, completed 20 years or more of creditable service, *and terminated covered employment.*

(2) A member eligible to receive a retirement allowance, as provided in subsection (1), must apply in writing to the department.

(3) *(a) Except as provided in subsection (3)(b), the* retirement allowance *may* commence on the first day of the month following the member's last day of covered employment *or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.*

*(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 60th birthday.*"

Section 8. Section 19-6-602, MCA, is amended to read:

"**19-6-602. Nomination of beneficiary.** (1) Every member may name a beneficiary who is eligible to receive a retirement allowance if there is no surviving spouse or dependent child. Nomination is by written designation, *witnessed* and filed with the department, and may be changed in like manner.

(2) Nothing in this section affects the right of a surviving spouse or dependent child to receive a retirement allowance."

Section 9. Section 19-7-101, MCA, is amended to read:

"**19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement pension trust fund administered by the board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(4) "Beneficiary" means a person who is nominated by the member in *a witnessed* document filed with the board.

(5) "Board" means the public employees' retirement board.

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(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

(8) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Member" means any person who has accumulated deductions in the account to his credit.

(10) "Member's annuity" means payments for life derived from contributions made by the member while employed.

(11) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

(12) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

(13) "Retired sheriff" means a person receiving a retirement allowance under this chapter.

(14) "Retirement allowance" means the state annuity plus the member's annuity.

(15) "Service" means employment as a sheriff.

(16) "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

(17) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

(18) "Vested retirement" means a retirement not for cause and before retirement age."

Section 10. Section 19-7-501, MCA, is amended to read:

**"19-7-501. Eligibility and application for service retirement — commencement of allowance.** (1) A sheriff in service who has completed at least 25 years of service, reached the age of 55 years, *and terminated covered employment* may retire on a service retirement allowance upon written application to the board.

(2) *(a) Except as provided in subsections (2)(b) and (2)(c), the* retirement allowance *may* commence on the first day of the month following the

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member's last day of membership service *or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.*

*(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 65th birthday.*

*(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of his term of office. An official electing this option may not earn service or salary credits in that month, and compensation earned in that month is not subject to employer or employee contributions.*"

Section 11. Section 19-7-602, MCA, is amended to read:

"**19-7-602. Designation of beneficiary.** Every member may name a beneficiary by a written designation, *witnessed and* properly filed with the board, and change the beneficiary in like manner. The designation and any changes may be filed with the board up until but not after the time of retirement."

Section 12. Section 19-8-101, MCA, is amended to read:

"**19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana state game wardens' retirement pension trust fund.

(2) "Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, *witnessed* and filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

(7) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

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(8) "Member's annuity" means payments for life derived from contributions made by the contributor.

(9) "Retired state game warden" means any person in receipt of a retirement allowance under this chapter.

(10) "Retirement allowance" means the state annuity plus the member's annuity.

(11) "State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys.

(12) "State game warden" means all state fish and game wardens hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks moneys."

Section 13. Section 19-8-601, MCA, is amended to read:

**"19-8-601. Time of retirement — commencement of allowance.** (1) Any member in service who has completed at least 20 years of creditable service, reached the age of 50 years, *and terminated covered employment* may retire on service retirement allowance upon written application to the board.

(2) *(a) Except as provided in subsection (2)(b), the* retirement allowance *may* commence on the first day of the month following the member's last day of covered employment *or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.*

*(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 60th birthday."*

Section 14. Section 19-8-702, MCA, is amended to read:

**"19-8-702. Nomination of beneficiary.** Each contributor may name his beneficiary by written designation, *witnessed* and filed with the board, and may change the beneficiary in like manner. The designation and all changes must be filed with the board."

Section 15. Section 19-9-801, MCA, is amended to read:

**"19-9-801. Eligibility for service retirement — commencement of allowance.** Members are eligible for retirement and shall retire as provided in this section:

(1) A member who was employed by an employer as a police officer on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank *and has terminated covered employment.*

(2) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50, has completed 20 years or more

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in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank, *and has terminated covered employment.*

(3) *(a) Except as provided in subsection (3)(b), the* retirement allowance *may* commence on the first day of the month following the member's last day of membership service *or, if requested by the terminated member in writing, on the first day of the month following receipt of the written application.*

*(b) The retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday."*

Section 16. Section 19-9-804, MCA, is amended to read:

**"19-9-804. Amount of service retirement allowance — continuation of allowance after death of member.** (1) A police officer who is eligible under subsection (1) or (2) of 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of *his final average salary for each* year of additional service, up to a maximum of 60% of *his* final average salary.

(3) Upon the death of a police officer receiving a service retirement allowance under this section, his surviving spouse, if there is one, shall, for as long as the spouse remains unmarried, receive from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent children, then upon his death, if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, the officer's surviving dependent child, or children collectively if there are more than one, shall receive the same monthly payments a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent."

Section 17. Section 19-13-701, MCA, is amended to read:

**"19-13-701. Eligibility for service retirement — commencement of allowance.** (1) A member who has reached age 50 and has completed 10 years or more in the aggregate as a firefighter in any capacity or rank is eligible for service retirement commencing on the first day of the month following the member's last day of membership service.

(2) A member who terminates active service before age 50 and keeps his contributions on deposit under 19-13-304 is eligible for service retirement commencing on the first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 50.

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*(3) A terminated member eligible under subsection (1) or (2) may file a written application with the board requesting that his retirement allowance commence on the first day of the month following receipt of the application. However, the retirement allowance for an eligible terminated member must commence no later than the first day of the month following the member's 55th birthday."*

Section 18. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 19. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to persons who were members of the retirement systems on or after January 1, 1989.

Section 20. **Effective date.** [This act] is effective on passage and approval.

Approved March 20, 1989.

# CHAPTER NO. 197

[HB 167]

AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES, RATHER THAN THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES, TO SET FEES FOR PUBLIC WATER SUPPLY TESTS PERFORMED BY THE DEPARTMENT; AMENDING SECTIONS 50-1-202 AND 75-6-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-1-202, MCA, is amended to read:

**"50-1-202. General powers and duties.** The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the

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director of institutions or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(10) conduct health education programs;

(11) provide consultation to school and local community health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) after-care and related services; and

(d) eligibility;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) *after consultation with the board,* adopt rules imposing fees for the tests and services performed by the laboratory of the department. Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees shall be deposited in the state special revenue fund for the use of the department in performing tests and services.

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies."

Section 2. Section 75-6-103, MCA, is amended to read:

"**75-6-103. Duties of the board.** (1) The board has general supervision over all state waters which are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees for services rendered by the department in conducting inspections;

(c) monitoring, recordkeeping, and reporting by persons who own or operate a public water supply system;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supply systems;

(f) the siting, construction, operation, and modification of a public water supply system;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part; and

(i) any other requirement necessary for the protection of public health as described in this part.

(3) The board may issue orders necessary to fully implement the provisions of this part."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 21, 1989.

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# CHAPTER NO. 198

[HB 116]

AN ACT TO AMEND THE ELDER ABUSE PREVENTION ACT TO INCLUDE DEVELOPMENTALLY DISABLED PERSONS; AMENDING SECTIONS 53-5-501 THROUGH 53-5-504, 53-5-511 THROUGH 53-5-513, 53-5-521, AND 53-5-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-5-501, MCA, is amended to read:

**"53-5-501. Short title.** This part may be cited as the "Montana Elder *and Developmentally Disabled* Abuse Prevention Act"."

Section 2. Section 53-5-502, MCA, is amended to read:

**"53-5-502. Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, neglect, and exploitation of Montana's elderly *and developmentally disabled persons* through the identification and reporting of acts of such abuse, neglect, and exploitation."

Section 3. Section 53-5-503, MCA, is amended to read:

**"53-5-503. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person *or a developmentally disabled person* without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

*(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.*

*(3)* "Exploitation" means the unreasonable use of an older person *or a developmentally disabled person*, his money, or his property to the advantage of another by means of duress, menace, fraud, or undue influence.

*(4)* "Long-term care facility" means a facility defined in 50-5-101.

*(5)* "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

*(6)* "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's *or a developmentally disabled person's* welfare to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person *or the developmentally disabled person.*

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*(7)* "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 53-5-525(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

*(8)* "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

Section 4. Section 53-5-504, MCA, is amended to read:

**"53-5-504. Duties of department of family services.** *(1) The department shall investigate reports of abuse, neglect, or exploitation received pursuant to 53-5-511(1)(a).*

*(2)* The department of family services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

*(3)* The department shall, when appropriate, provide protective services under Title 53, chapter 5, part 2, *or under Title 53, chapter 20, part 4,* for *a* person alleged to have been abused, neglected, or exploited.

*(4) If a person alleged to be abused, neglected, or exploited pursuant to this part or his caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 53-5-511(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding there is probable cause to believe the person is abused, neglected, or exploited."*

Section 5. Section 53-5-511, MCA, is amended to read:

**"53-5-511. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person *or a developmentally disabled person* known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse,

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exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person *or the developmentally disabled person* resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person *or a developmentally disabled person* in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless he acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

(g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1)."

Section 6. Section 53-5-512, MCA, is amended to read:

"**53-5-512. Content of report.** (1) The report required by 53-5-511 may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.

(2) The report referred to under this section shall contain:

(a) the names and addresses of the older person *or the developmentally disabled person* and the person, if any, responsible for his care;

(b) the name and address, if available, of the person who is alleged to have abused, neglected, or exploited the older person *or the developmentally disabled person*;

(c) to the extent known, the person's age and the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous injuries sustained by the older person *or the developmentally disabled person*; and

(d) the name and address of the person making the report."

Section 7. Section 53-5-513, MCA, is amended to read:

"**53-5-513. Confidentiality.** (1) The case records of the *departments* of social and rehabilitation services and *family services, their* local affiliate, the county attorney, and the court, concerning actions taken under this

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part, and all reports made pursuant to 53-5-511 shall be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who has in his care an older person *or a developmentally disabled person* who he reasonably believes was abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person *or the developmentally disabled person* if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person *or the developmentally disabled person* who is the subject of the report is not disclosed to the researcher; and

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(3) The records and reports required to be kept confidential by subsection (1) shall be disclosed upon request to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, neglected, or exploited an older person *or a developmentally disabled person* is the holder of a license, permit, or certificate issued by the department of commerce *under the provisions of Title 37* or *issued by* any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 8. Section 53-5-521, MCA, is amended to read:

**"53-5-521. Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the provisions of this part or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the person who is the subject of the report may not be

excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803."

Section 9. Section 53-5-525, MCA, is amended to read:

"**53-5-525. Penalties.** (1) Any person who purposely or knowingly fails to make a report required by 53-5-511 or discloses or fails to disclose the contents of a case record or report in violation of 53-5-513 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, neglects, or exploits an older person *or a developmentally disabled person* is guilty of an offense and upon a first conviction may be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed $10,000, or both."

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved March 21, 1989.

# CHAPTER NO. 199

[HB 218]

AN ACT GENERALLY REVISING LAWS RELATING TO FINANCIAL INSTITUTIONS; REQUIRING A REPORT OF EXAMINATION WITHIN 120 DAYS OF COMPLETION; REVISING CHARGES FOR EXAMINATION OF FINANCIAL INSTITUTIONS; REDEFINING INVESTMENT IN CAPITAL STOCKS; ALLOWING INVESTMENT IN CERTAIN SECURITIES; CLARIFYING ISSUANCE OF DRAFTS; AMENDING SECTIONS 32-1-211, 32-1-215, 32-1-422, 32-1-433, AND 32-1-437, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

## STATEMENT OF INTENT

A statement of intent is required for this bill because it grants to the department of commerce authority to make rules relative to allowing a bank to invest in capital stock of certain corporations and removing the limit on certain securities that a bank may hold. In structuring these rules, the department shall consider the provisions of all applicable statutes and rules. Charges allowed may not exceed the actual costs, supported by documentation, incurred in conducting special examinations. The rules must provide adequate safeguards, in the form of substantiation of the fiscal stability of the issuer, to ensure the financial integrity of every quasi-governmental corporation in which an investment is allowed. The rules

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may also require evaluation to determine suitability of particular investments. Paramount in any rule regarding bank investments must be the safety of depositors funds.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-1-211, MCA, is amended to read:

**"32-1-211. Examination and supervision by department.** (1) The department shall exercise constant supervision over the books and affairs of all banks doing business in this state.

(2) It shall:

*(a)* examine, at least once every 30 months, each of those banks and verify the assets and liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books; *and*

*(b) submit in writing to the examined bank a report of the examination's findings no later than 120 days after the completion of the examination.*

(3) It shall further investigate the methods of operation and conduct of business of the banks and their systems of accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.

(4) It may examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank regarding the affairs and business *of the bank.*

(5) It may, in the performance of its official duties, issue subpoenas and administer oaths. In case of a refusal to obey a subpoena issued by it, the refusal may at once be reported to the district court of the district in which the bank is located, and the court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(6) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(7) All officers, directors, agents, and employees of banks doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank shall at all times afford reasonable facilities for the examinations and make returns and reports to the department as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce and exhibit any books, accounts, documents, and property it desires to inspect, and in all things aid it in the performance of its duty."

Section 2. Section 32-1-215, MCA, is amended to read:

**"32-1-215. Special examinations and fees — report within 120 days.** Special examinations may be made of a bank, trust company, investment company, building and loan association, or credit union when in the

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judgment of the department it is considered necessary, and the special examination shall be charged for at *a* rate *that equals the department's actual costs for examiner wages and travel expenses.* All special examination fees or charges shall be paid at the conclusion of the examination, and the moneys collected by the department shall be paid to the state treasurer for the credit of the state special revenue fund for the use of the department in its examination function. *The department shall submit in writing to the examined bank a report of the examination's findings no later than 120 days after the completion of the examination.*"

Section 3. Section 32-1-422, MCA, is amended to read:

"**32-1-422. Restriction on investment in corporate stock.** (1) No commercial or savings bank shall purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation unless the purchase or acquisition of capital stock *is* necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by *the* bank within 6 months thereafter, if it can be sold for the amount of the claim of *the* bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by *the* bank within 1 year after such purchase or acquisition, or if *the* stock is unmarketable, it shall be charged off as an investment loss, which shall be equivalent to *the stock's* sale. Every person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of such stock.

(2) Notwithstanding subsection (1), a bank may *acquire and hold for its own account:*

*(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;*

*(b) shares of stock of a federal reserve bank, without limitation of amount; and*

*(c) shares of stock in a Montana capital company within limits prescribed by the Montana Capital Company Act.*

*(3) A bank may invest any amount up to 5% of its unimpaired capital and surplus in shares of stock of:*

*(a) the federal national mortgage association;*

*(b) the federal home loan mortgage corporation;*

*(c) the federal agricultural mortgage corporation; and*

*(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.*"

Section 4. Section 32-1-433, MCA, is amended to read:

"**32-1-433. Investment in certain securities.** *A bank may purchase, sell, underwrite, and hold investment securities that are obligations*

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*in the form of bonds, notes, or debentures, as provided in rules adopted by the department. A bank may hold without limit investment securities that are general obligations of the United States, obligations that are guaranteed fully as to principal and interest by the United States, or general obligations of any state.*"

Section 5. Section 32-1-437, MCA, is amended to read:

"**32-1-437. Acceptance and issuance of drafts.** Every bank organized and existing under the laws of Montana shall have power and authority to accept for payment at a future date drafts drawn upon it by its customers, authorizing holders thereof to draw drafts upon it or its correspondents at sight or on time, provided that the total amount of drafts so accepted for any one person, firm, or corporation shall not at any one time exceed 20% of the capital and surplus of the accepting or issuing bank."

Section 6. **Rulemaking authority.** The department shall adopt rules to implement [sections 3 through 5].

Section 7. **Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 32, chapter 1, part 4, and the provisions of Title 32, chapter 1, part 4, apply to [section 6].

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved March 21, 1989.

# CHAPTER NO. 200

[SB 320]

AN ACT GENERALLY REVISING THE LAW RELATING TO MEAT AND POULTRY SLAUGHTER AND INSPECTION; CLARIFYING THE REPORTING REQUIREMENTS FOR VIOLATIONS OF HIDE INSPECTION LAWS; CLARIFYING THE EXEMPTION PROVISION FOR CUSTOM MEAT PROCESSORS; REMOVING THE REQUIREMENT THAT THE CHIEF MEAT INSPECTOR BE A VETERINARIAN; AMENDING SECTIONS 81-9-114, 81-9-218, AND 81-9-226, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-9-114, MCA, is amended to read:

"**81-9-114. Duty to report violations.** A person required to be licensed under 81-9-201 shall report any violation of 81-9-112 to *the department or* the sheriff of the county *where the* violation occurred and of which *the* person has knowledge. Upon failure to do so, the person shall suffer a revocation of his license and no license shall again be issued to *the* person until the expiration of 1 year from the date of revocation."

Section 2. Section 81-9-218, MCA, is amended to read:

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"**81-9-218. Exemptions.** *(1)* The following persons are exempt from 81-9-201, 81-9-216 through 81-9-220, and 81-9-226 through 81-9-236:

*(a)* a person who slaughters livestock or poultry or prepares or processes livestock or poultry products for his own personal or household use; and

*(b)* a person who transports dead, dying, or diseased animals or poultry for the purpose of treatment, burial, or disposal in a manner that would prevent the carcasses from being used as human food.

*(2) A person engaged in the custom slaughtering of livestock or poultry delivered by the owner for custom slaughter or a person engaged in the preparation of the carcasses and parts and meat food products of such livestock or poultry when slaughtered or prepared for exclusive use in the owner's household by the owner or members of his household or his nonpaying guests or employees is exempt from 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, provided the carcasses, parts, or meat food products or containers of such articles are:*

*(a) kept separate from carcasses, parts, or meat food products prepared for sale;*

*(b) plainly marked "Not for Sale" immediately after being slaughtered or prepared and remain plainly marked until delivered to the owner; and*

*(c) prepared and packaged in a sanitary manner and in a sanitary facility."*

Section 3. Section 81-9-226, MCA, is amended to read:

"**81-9-226. Chief meat inspector — deputies — qualifications.** (1) There is a chief meat inspector, who must be appointed by the board and shall serve at its pleasure.

(2) The chief shall supervise the state meat inspection program established in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 and shall enforce the provisions of 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to assure the public that only pure, wholesome, and unadulterated meat or meat food products are offered for sale.

(3) Upon recommendation of the chief, the board shall appoint veterinary meat inspectors and lay meat inspectors, who must be responsible to the chief and who shall conduct ante-mortem and post-mortem inspections, enforce sanitary requirements, and perform other necessary meat inspection duties.

(4) An inspector assigned to an official establishment may not be related to the management of the establishment or have any financial interest therein."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 21, 1989.

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# CHAPTER NO. 201

[HB 431]

AN ACT PERMITTING LOCAL GOVERNMENTS TO INVEST PUBLIC FUNDS IN UNITED STATES OBLIGATIONS EITHER DIRECTLY OR IN THE FORM OF SECURITIES OF OR OTHER INTERESTS IN CERTAIN INVESTMENT COMPANIES OR INVESTMENT TRUSTS; PERMITTING SECURITIES OF OR OTHER INTERESTS IN THESE COMPANIES OR TRUSTS TO BE PLEDGED TO SECURE DEPOSITS OF PUBLIC FUNDS; AND AMENDING SECTIONS 7-6-202 AND 17-6-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-202, MCA, is amended to read:

**"7-6-202. Investment of public money in direct obligations of the United States.** *(1) A* local governing body *may* invest public money not necessary for immediate use by *the* county, city, or town in direct obligations of the United States government and securities issued by agencies of the United States.

*(2) The local governing body may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:*

*(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and*

*(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian."*

Section 2. Section 17-6-103, MCA, is amended to read:

**"17-6-103. Security for deposits of public funds.** The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

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(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; and

(j) federal home loan mortgage corporation;

*(4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:*

*(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and*

*(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;*

*(5)* general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

*(6)* revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of *the* subdivision or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due on all bonds payable *from the* revenues during the outstanding term of *the* bonds;

*(7)* interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

*(8)* obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of commerce, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

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*(9)* general obligation bonds of other states and of municipalities, counties, and school districts of other states;

*(10)* undertaking or guarantees issued by a surety company authorized to do business in the state;

*(11)* first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

*(12)* bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

*(13)* bonds issued pursuant to Title 90, chapter 6, part 1;

*(14)* revenue bonds issued by any unit of the university system of the state of Montana;

*(15)* advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow; and

*(16)* linked deposit loan obligations incurred under 80-14-203. **(Subsection** *(16)* terminates June 30, 1989—sec. 6, Ch. 57, L. 1987.)"

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 21, 1989.

# CHAPTER NO. 202

[SB 140]

AN ACT TO MAKE THE POSSESSION OF PHENYL-2-PROPANONE (PHENYLACETONE) PUNISHABLE AS CRIMINAL POSSESSION OF PRECURSORS TO DANGEROUS DRUGS; AND AMENDING SECTION 45-9-107, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-9-107, MCA, is amended to read:

**"45-9-107. Criminal possession of precursors to dangerous drugs.** (1) A person commits the offense of criminal possession of precursors to dangerous drugs if he possesses:

(a) phenyl-2-propanone (phenylacetone) with the intent to manufacture amphetamine *or* methamphetamine, *or both*;

*(b)* both piperidine and cyclohexanone at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP).

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(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed $50,000, or both."

Approved March 21, 1989.

# CHAPTER NO. 203

[SB 147]

AN ACT TO GENERALLY REVISE THE LAWS REGULATING THE PRACTICE OF CHIROPRACTIC; AND AMENDING SECTIONS 37-12-104, 37-12-201, 37-12-302, AND 37-12-322, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-12-104, MCA, is amended to read:

**"37-12-104. Rights and limitations governing practice.** (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are *medical doctors, osteopaths,* or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies."

Section 2. Section 37-12-201, MCA, is amended to read:

**"37-12-201. Organization of board — meetings — powers and duties.** (1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. A majority of the board constitutes a quorum.

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal which shall be affixed to licenses issued;

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(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, and disciplinary standards for licensees;

(e) investigate complaints;

(f) make determinations of the qualifications of applicants under this chapter;

(g) administer the examination for licensure under this chapter;

(h) *establish and* collect fees, *fines,* and charges *as provided* in this chapter; and

(i) issue, suspend, or revoke licenses under the conditions prescribed in this chapter.

(4) The department shall keep a record of the proceedings of the board which shall at all times be open to public inspection."

Section 3. Section 37-12-302, MCA, is amended to read:

**"37-12-302. Applications — qualifications — fees.** (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant shall be a graduate of *or expect to graduate within 90 days prior to the next licensing examination administered by the board from* a college of chiropractic approved by the board, in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic years of college or university work from an institution acceptable to the board of regents of higher education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice. The application shall be accompanied with proofs by diplomas, certificates, etc., and satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee prescribed by the board. Like fees shall be paid for a subsequent examination and application."

Section 4. Section 37-12-322, MCA, is amended to read:

**"37-12-322. Investigation of complaints — discipline of licensees — revocation or suspension of license.** (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

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(a) has a mental or physical condition such that he is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured his license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while his license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;

(b) suspend the licensee's right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the licensee on probation;

*(e) fine the licensee in an amount not to exceed $500 for each incident; or*

*(f)* take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

*(7) Following a final determination resulting in any disciplinary action taken by the board under subsection (4), the board may recover from the disciplined party all reasonable costs of any proceeding, not to exceed $1,000, incurred for the purpose of the disciplinary action. Fines and costs recovered must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).*"

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 21, 1989.

# CHAPTER NO. 204

[HB 114]

AN ACT REVISING THE LAWS RELATING TO SERVICE CREDITS IN THE TEACHERS' RETIREMENT SYSTEM FOR VIETNAM CONFLICT ERA VETERANS; EXTENDING THE TIME PERIOD DURING WHICH SUCH SERVICE QUALIFIES; INCREASING EMPLOYER CONTRIBUTIONS TO THE FUND; AMENDING SECTIONS 19-4-404 AND 19-4-605, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-4-404, MCA, is amended to read:

"**19-4-404. Creditable service for active service in military, red cross, or merchant marine.** (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and

coast guard, during the Vietnam conflict between *December 22, 1961*, and May 7, 1975, both dates inclusive, if he has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a completed application form and proper certification of his military service.

(2) If a member is ineligible for service credit under subsection (1), he may apply under the provisions of this subsection for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 2. Section 19-4-605, MCA, is amended to read:

**"19-4-605. Pension accumulation fund — employer's contribution.** The pension accumulation fund is the fund in which the reserves for payment of pensions and annuities shall be accumulated and from which pensions, annuities, and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to *7.459%* of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the

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amount required to allow regular interest on the annuity savings fund shall be transferred to that fund from the pension accumulation fund.

(6) All pensions, annuities, and benefits in lieu thereof shall be paid from the pension accumulation fund.

(7) The retirement board may, in its discretion, transfer from the pension accumulation fund an amount necessary to cover expenses of administration."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Section 5. **Applicability.** [Sections 1 and 2] apply to all members of the teachers' retirement system who are active members on or after July 1, 1989.

Approved March 21, 1989.

# CHAPTER NO. 205

[SB 5]

AN ACT PROVIDING FOR A CONTINUOUS LICENSE FOR ANY PERSON OTHER THAN A LICENSED GASOLINE DISTRIBUTOR; ELIMINATING THE LICENSE FEE; AMENDING SECTION 15-70-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-203, MCA, is amended to read:

**"15-70-203. License to sell gasoline on which refund may be claimed.** (1) Any person other than a licensed distributor shall obtain a license from the department of revenue prior to selling gasoline on which a refund may be claimed. The application for license shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the department. Licenses issued shall bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license shall be issued *and be effective until canceled or suspended by the department.*

(2) Any person failing to comply with this section shall be subject to a fine of not less than $25 or more than $200 or imprisonment in the county jail for a period not less than 10 days or more than 60 days or both fine and imprisonment."

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Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on July 1, 1989.

Approved March 21, 1989.

# CHAPTER NO. 206

[HB 210]

AN ACT TO PROVIDE THAT INTEREST EARNED ON THE GROSS REVENUE GENERATED BY THE STATE LOTTERY WHILE THE GROSS REVENUE IS IN THE LOTTERY ENTERPRISE FUND IN THE STATE TREASURY IS NET LOTTERY REVENUE AND MUST BE DISTRIBUTED TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO BE USED AS EQUALIZATION AID FOR THE TEACHERS' RETIREMENT FUNDS; AND AMENDING SECTION 23-5-1027, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-1027, MCA, is amended to read:

"**23-5-1027. Disposition of revenue.** (1) (a) As near as possible to 45% of the money paid for tickets or chances must be paid out as prize money, except as provided in subsection *(1)*(b).

(b) In the case of a regional lottery game, a maximum of 50% of the money paid for tickets or chances may be paid out as prize money.

(2) Up to 15% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) Funds to pay the operating expenses of the lottery are statutorily appropriated as provided in 17-7-502.

(4) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, *together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund,* is net revenue and must be paid quarterly from the enterprise fund established by 23-5-1026 to the superintendent of public instruction for distribution as equalization aid to the retirement fund obligations of elementary and high school districts in the manner provided in 20-9-532."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 21, 1989.

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# CHAPTER NO. 207

[HB 139]

AN ACT GENERALLY REVISING PROVISIONS REGARDING TRAVEL EXPENSES FOR PERSONS IN STATE SERVICE; ALLOWING REIMBURSEMENT FOR MEALS AND LODGING OF PERSONS IN STATE SERVICE TRAVELING TO A FOREIGN COUNTRY; USING RATES ESTABLISHED BY THE UNITED STATES DEPARTMENT OF STATE FOR TRAVEL TO FOREIGN AREAS; INCREASING THE REIMBURSEMENT RATE FOR LODGING AT CERTAIN FACILITIES; AMENDING SECTION 2-18-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-501, MCA, is amended to read:

**"2-18-501. Meals, lodging, and transportation of persons in state service.** Every elected official, appointed members of boards, commissions, councils, department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) For travel within the state of Montana, the following provisions apply:

(a) The governor shall be authorized actual and necessary expenses not to exceed $55 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging, not exceeding $24 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus $3 for the morning meal, $3.50 for the midday meal, and $8 for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) For travel out of the state of Montana, the following provisions apply:

(a) The governor shall be authorized the actual cost of lodging in addition to a meal allowance not to exceed $30 per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding $50 per day, except as provided in subsection (3), plus $4 for the morning meal, $6.50 for the midday meal, and $12 for the evening meal. All claims for the lodging

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expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

(3) All other elected state officials, appointed members of boards, commissioners, councils, department directors, and all other state employees shall be authorized the actual cost of lodging when traveling in the normal course of their duties to certain designated areas. The department of administration shall designate those areas where the actual cost of lodging shall be reimbursed.

*(4) For travel to a foreign country, the following provisions apply:*

*(a) All elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in establishing the rates.*

*(b) All claims for meals and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.*

*(5)* When other than commercial, nonreceiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of *$12* will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(b) or (2)(b) above. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

*(6)* The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

*(7)* The provisions of this section shall not be construed as affecting the validity of 5-2-301.

*(8)* The department of administration shall prescribe rules necessary to effectively administer this section for state government.

*(9)* All commercial air travel shall be by the least expensive class service available."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 21, 1989.

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# CHAPTER NO. 208

[HB 97]

AN ACT TO GRANT CITY COURTS JURISDICTION TO ISSUE TEMPORARY RESTRAINING ORDERS WHEN A PETITIONER ALLEGES PHYSICAL ABUSE, HARM, OR BODILY INJURY BY A FAMILY OR HOUSEHOLD MEMBER; AND AMENDING SECTIONS 3-10-301 AND 40-4-122 THROUGH 40-4-125, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-10-301, MCA, is amended to read:

**"3-10-301. Civil jurisdiction.** (1) Except as provided in subsection (2) and in 3-11-103, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $3,500, exclusive of court costs;

(b) in actions for damages not exceeding $3,500, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $3,500, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $3,500;

(e) in actions for a fine, penalty, or forfeiture not exceeding $3,500, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $3,500, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $3,500, exclusive of court costs;

*(h) to issue temporary restraining orders as provided in 40-4-121(3).*

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 2. Section 40-4-122, MCA, is amended to read:

**"40-4-122. Forms — distribution — filing.** The attorney general shall prepare uniform sample instructions and petition and order forms

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necessary for allowing an applicant to obtain a temporary restraining order under 40-4-121 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the clerk of the district court in each county and to justice, *city,* and municipal courts. The clerk of the district court, justices of the peace, *city,* and municipal courts shall make forms available to the public at no charge."

Section 3. Section 40-4-123, MCA, is amended to read:

**"40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, *and city courts* have concurrent jurisdiction to hear and issue orders under 40-4-121(3).

(2) The municipal judge, justice of the peace, *or city court judge* shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-121(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse."

Section 4. Section 40-4-124, MCA, is amended to read:

**"40-4-124. Review or removal — district court.** (1) An order issued by a municipal court, justice court, *or city court* pursuant to 40-4-121(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court, justice court, *or city court* made pursuant to 40-4-121(3).

(2) Any case in which an order has been issued by a municipal court, justice court, *or city court* pursuant to 40-4-121(3) may be removed to district court upon filing of a notice of removal."

Section 5. Section 40-4-125, MCA, is amended to read:

**"40-4-125. Registration of orders.** (1) The clerk of court, justice of the peace, municipal court judge, *or city court judge* shall, within 24 hours of receiving proof of service of an order under 40-4-121, mail a copy of the order or any extension, modification, or termination thereof along with a copy of the proof of service to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of a protective order are informed of the existence and terms of such order."

Approved March 21, 1989.

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# CHAPTER NO. 209

[HB 142]

AN ACT TO ABOLISH THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION SERIALLY NUMBER AND PERMANENTLY RETAIN COPIES OF ALL FORMS, BLANKS, AND DOCUMENTS PRINTED FOR DISTRIBUTION TO STATE AGENCIES; AND AMENDING SECTION 18-7-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-7-101, MCA, is amended to read:

**"18-7-101. Power to contract for printing.** (1) Except as provided in 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

*(3)* Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing."

Approved March 21, 1989.

# CHAPTER NO. 210

[HB 152]

AN ACT AUTHORIZING THE YOUTH COURT TO COMMIT DELINQUENT YOUTHS AND YOUTHS IN NEED OF SUPERVISION TO MENTAL HEALTH FACILITIES AND ESTABLISHING THE PROCEDURES FOR SUCH COMMITMENTS; AMENDING SECTION 41-5-523, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

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(b) commit the youth to the department. The department shall thereafter determine the appropriate placement, supervision, and rehabilitation program for the youth after considering the recommendation of the youth placement committee as provided in 41-5-527; provided, however, that:

(i) in the case of a youth in need of supervision, such commitment does not authorize the department to place the youth in a state youth correctional facility. The court shall determine whether continuation in the home would be contrary to the welfare of the child and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is a serious juvenile offender, the judge may specify that the youth be placed in physical confinement in an appropriate facility only if the judge finds that such confinement is necessary for the protection of the public;

(iii) a youth may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(iv) a youth is under the supervision of a youth probation officer, except that a youth placed in a youth correctional facility is supervised by the department;

(c) order such further care and treatment or evaluation that does not obligate funding from the department without the department's approval;

(d) order restitution by the youth or his parents;

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(f) require the performance of community service;

(g) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(h) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(i) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate;

*(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.*

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*(k)* such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(5) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(6) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(7) The order of commitment tc the department shall read as follows:

ORDER OF COMMITMENT

State of Montana )
) ss.
County of ..... )

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ...., a minor of this county, .... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of family services.

It is ordered that .... be committed to the department of family services until .....

The names, addresses, and occupations of the parents are:

| Name | Address | Occupation |
|---|---|---|
| ..... | ..... | ..... |
| ..... | ..... | ..... |

The names and addresses of their nearest relatives are:

.....
.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge"

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved March 21, 1989.

# CHAPTER NO. 211

[HB 290]

AN ACT PERMITTING PERSONS TO FISH THROUGH ICE WITH UNATTENDED LINES OR RODS IF THEY ARE WITHIN VISUAL CONTACT WITH THEIR LINES OR RODS; AMENDING SECTION 87-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-3-204, MCA, is amended to read:

**"87-3-204. Restrictions on fishing methods.** (1) No game fish may be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor may any such set gun, trap, or other device to entrap game fish be used, made, or set.

(2) It is unlawful for a person to take or catch fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; to take or catch fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or to take or catch fish by means of the use of fishtraps, grabhooks, seines, nets, or other similar means for catchin, fish.

(3) The department may designate such waters within the state of Montana wherein, in the judgment of the department, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or spring-propelled spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. The waters so designated may be closed at the discretion of the department. The taking of all fish by such means in the waters, when so designated, is to be done under such rules as the department may prescribe with reference thereto and under the supervision of the department. All such nongame fish so taken may be possessed and sold in such manner and under such restrictions as the department may direct. All fish, other than those herein designated, so taken under department rules, when prescribed by the department, shall be returned uninjured to the waters from which they were taken.

(4) The taking of black bass in Flathead Lake may be permitted by the department.

(5) The department shall have the power to designate certain waters where setlines may be used to fish for certain species of game or nongame

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fish, and the department may designate the number of hooks and lines and the length of line or lines which may be used as setlines.

(6) Game fish shall be taken only by angling; that is, by hook and single line in hand or single rod in hand or within immediate control. This does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the department declares an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish, channel catfish, and nongame fish with longbow and arrow, under such rules and regulations as the fish and game commission may prescribe;

(c) the taking of walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig when the department declares an open season for taking walleyed pike, sauger, northern pike, burbot (ling), and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified;

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in such waters as may be designated by the department;

(f) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish and game commission may prescribe; *or*

*(g) the taking of any game fish through a hole in ice with an unattended line or rod as long as the angler is in the vicinity and within visual contact of the line or rod.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 21, 1989.

# CHAPTER NO. 212

[HB 127]

AN ACT TO LOWER THE MAXIMUM AGE FOR JURISDICTION OF THE DEPARTMENT OF FAMILY SERVICES FROM AGE 21 TO AGE 19; AMENDING SECTIONS 53-30-202, 53-30-208, 53-30-212, AND 53-30-227, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-30-202, MCA, is amended to read:

"**53-30-202. Establishment of youth correctional facilities.** The department of family services, within the annual or biennial budgetary

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appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under *19* years of age. The facilities include but are not limited to the Mountain View school and the Pine Hills school."

Section 2. Section 53-30-208, MCA, is amended to read:

"**53-30-208. Maximum age of commitment.** No child who has attained the age of 18 years shall be committed by any youth court to the department of family services, except, however, that any person under *19* years who prior to attaining the age of 18 years came under the jurisdiction of the youth court by reason of delinquent conduct and whose adjudication of delinquency is not made until after the child reaches the age of 18 years *may* be committed to the department of family services."

Section 3. Section 53-30-212, MCA, is amended to read:

"**53-30-212. Commutation of sentence to state prison and transfer of prisoner to youth correctional facility or Swan River forest camp.** (1) Upon the application of a person under *19* years of age who has been sentenced to the state prison or upon the application of his parents or guardian, the governor may, after consulting with the department of institutions and the department of family services and with the approval of the board of pardons, commute the sentence by committing such person to the department of family services until he is *19* years of age or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department of family services indicates that he is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of institutions and the department of family services and with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities shall not be considered as a part of his original sentence.

(3) Upon recommendation of the warden and with the approval of the department of institutions and the department of family services, a person under *19* years of age who has been sentenced to the state prison may be transferred to any youth correctional facility under the jurisdiction and control of the department of family services.

(4) Upon recommendation of the warden and approval of a person sentenced to the state prison or application of a person sentenced to the state prison and approval of the warden and with the approval of the department of institutions, such person sentenced to the state prison who is 25 years of age or younger may be transferred to the Swan River forest camp. Prior to departmental approval of the transfer, the person must undergo an evaluation by the department to determine his suitability for transfer to the camp. The results of the evaluation must include a finding that a minimum security facility is an appropriate placement for such person or the transfer shall be denied. If the person is transferred, he shall be under the supervision and control of the facility to which he is transferred.

(5) If such person's behavior after transfer to a youth correctional facility or the Swan River forest camp indicates he might be released on parole

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or his sentence be commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department of institutions and the department of family services in the case of a youth correctional facility or with the approval of the department of institutions in the case of the Swan River forest camp, may make an appropriate recommendation to the board of pardons and the governor, who may in their discretion parole such person or commute his sentence.

(6) If such person's behavior after transfer to a youth correctional facility or the Swan River forest camp indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent and with the approval of the department of institutions and the department of family services in the case of a youth correctional facility or with the approval of the department of institutions in the case of the Swan River forest camp, such person shall be returned to the state prison to serve out his unexpired term."

Section 4. Section 53-30-227, MCA, is amended to read:

**"53-30-227. Control over youth released under aftercare agreement.** The department of family services has control over a *youth* released under 53-30-226 until he attains the age of *19* years *unless the youth is discharged by the department before age 19. However, the youth is subject* to the general jurisdiction of the various courts of Montana for acts committed by the *youth* while under the control of the department."

Section 5. **Applicability.** [This act] applies to proceedings begun on or after June 1, 1989.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 21, 1989.

# CHAPTER NO. 213

[SB 118]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO PROPERTY UNDER A TAX PROTEST OR APPEAL PROCEEDING; ALLOWING THE GOVERNING BODY OF A COUNTY, CITY, OR SCHOOL DISTRICT TO ISSUE BONDS WITHOUT AN ELECTION TO REPAY LOST TAX PROTESTS; EXCLUDING TAX PROTEST REPAYMENT BONDS FROM THE LIMITATIONS ON THE AMOUNT OF BONDED INDEBTEDNESS; EXCLUDING FROM LIMITATION TO 1986 LEVELS THOSE TAXES LEVIED TO REPAY TAXES PAID UNDER PROTEST; AMENDING SECTIONS 2-9-316, 7-7-2202, 7-7-2203, 7-7-2221, 7-7-4101, 7-7-4201, 7-7-4221, 15-1-402, 15-10-412, 20-9-403, 20-9-406, AND 20-9-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-1-402, MCA, is amended to read:

**"15-1-402. Payment of taxes under protest — action to recover.** (1) The person upon whom a tax or license fee is being imposed

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may proceed under 15-1-406 or may, before the tax or license fee becomes delinquent, pay under written protest that portion of the tax or license fee protested. The payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which grounds may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue.

(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed.

(4) *An* action instituted to recover any such portions of tax or license fee paid under protest *must* be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board.

(5) *If a* protested tax or license fee is payable in installments, *a* subsequent installment portion considered unlawful by the state tax appeal board need not be paid and no action or suit need be commenced to recover the *subsequent installment. The* determination of the action or suit commenced to recover the first installment portion paid under protest *determines* the right of the party paying such subsequent installment to have the same or any part thereof refunded to him or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(6) All taxes and license fees paid under protest to a county or municipality *must* be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and *must* be retained in *the* protest fund until the final determination of any action or suit to recover the same unless released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (7). Nothing contained herein prohibits the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(7) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the

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protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(8) (a) If no action is commenced within the time herein specified or if such action is commenced and finally determined in favor of the county or municipality or treasurer thereof, the amount of the protested portions of the tax or license fee *must* be taken from the protest fund and deposited to the credit of the fund or funds to which the same property belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units.

(b) If such action is finally determined adversely to a county or municipality or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action from the state tax appeal board, or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor such judgment is rendered the amount of such protested portions of the tax or license fee deposited in the protest fund, and not released pursuant to subsection (7), as the person holding such judgment is entitled to recover, together with interest thereon from the date of payment under protest, *at the greater of:*

*(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or*

*(ii) 6% a year.*

*(c)* If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then interest owed, and lastly to costs.

*(d)* If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible.

*(e)* In satisfying the requirements of subsection (8)*(d)*, the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the *greater of the rates referred to in subsections (8)(b)(i) and (8)(b)(ii)* from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

(9) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

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(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. *The bonds may be issued without being submitted to an election.* Property taxes may be levied to amortize *the* bonds."

Section 2. Section 15-10-412, MCA, is amended to read:

**"15-10-412. (Temporary) Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) construction, expansion, replacement, or remodeling of improvements that adds value to the property;

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(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the previous tax year. If a taxing unit's taxable valuation decreases by 5% or more from the previous tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

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(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) electric company street lighting assessments; and

(h) revolving funds to support any categories specified in this subsection (8).

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

*(11) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402.* **(Terminates December 31, 1989—sec. 6, Ch. 654, L. 1987.)"**

Section 3. Section 2-9-316, MCA, is amended to read:

**"2-9-316. Judgments against governmental entities except state.** *Except as provided in 15-1-402, a* political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(1) insurance;

(2) the general fund or any other funds legally available to the governing body;

(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

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(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually."

Section 4. Section 7-7-2202, MCA, is amended to read:

**"7-7-2202. Authority to issue general obligation bonds to satisfy judgments.** (1) The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, *including the repayment of tax protests lost by the county,* when:

(a) there are not sufficient funds available to pay such judgment; and

(b) sufficient money cannot be raised to satisfy such judgment by an annual tax levy of 10 mills levied on all the taxable property within the county through a period of 3 years.

(2) The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board and the judgment creditor."

Section 5. Section 7-7-2221, MCA, is amended to read:

**"7-7-2221. Issuance of certain general obligation bonds without election.** Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line, as set forth in 7-7-2201(5); and

(2) funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, as set forth in 7-7-2202 *and 15-1-402.*"

Section 6. Section 7-7-4101, MCA, is amended to read:

**"7-7-4101. Purposes for which indebtedness may be incurred.** The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes:

(1) erection of public buildings;

(2) construction of sewers, sewage treatment and disposal plants, waterworks, reservoirs, reservoir sites, and lighting plants;

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(3) supplying the city or town with water by contract and the construction or purchase of canals or ditches and water rights for supplying the city or town with water;

(4) construction of bridges, docks, wharves, breakwaters, piers, jetties, and moles;

(5) to acquire, open, and/or widen any street and to improve the same by constructing, reconstructing, and repairing pavement, gutters, curbs, and vehicle parking strips and to pay all or any portion of the cost thereof;

(6) the purchase of fire apparatus and street and other equipment;

(7) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(8) the funding of outstanding warrants and maturing bonds; *and*

*(9) the repayment of tax protests lost by the city, town, or other municipal corporation.*"

Section 7. Section 7-7-4221, MCA, is amended to read:

"**7-7-4221. Election on question of incurring indebtedness — exception.** (1) Except as provided in subsection (2) *and 15-1-402*, whenever the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality for any purpose authorized by law, the question of issuing the bonds shall first be submitted to the registered electors of the city or town.

(2) It is not necessary to submit to the electors the question of issuing refunding bonds to refund bonds issued and outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state."

Section 8. Section 20-9-403, MCA, is amended to read:

"**20-9-403. Bond issues for certain purposes.** (1) The trustees of a school district may issue and negotiate bonds on the credit of the school district for the purpose of:

(a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, and/or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of said buildings for school purposes;

(b) buying a school bus or buses;

(c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;

(d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds; or

(e) funding a judgment against the district, *including the repayment of tax protests lost by the district.*

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(2) Any money realized from the sale of any bonds issued on the credit of a high school district shall not be used for any of the above purposes in an elementary school district, and such money may be used for any of the above purposes for a junior high school but only to the extent that the 9th grade of the high school is served thereby."

Section 9. Section 20-9-421, MCA, is amended to read:

**"20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction.** A school district shall not issue bonds for any purpose other than that provided in *15-1-402 and* 20-9-412 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue such bonds. A school district bond election shall be called by a resolution as prescribed under the provisions of 20-20-201 when:

(1) the trustees, of their own volition, adopt a resolution to that effect; or

(2) the trustees have received a petition which asks that an election be held to consider a bond proposition and which has been validated under the provisions of 20-9-425."

Section 10. Section 7-7-2203, MCA, is amended to read:

**"7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property therein, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds which, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail which will not exceed 12.5% of the taxable value of the property in the county subject to taxation.

(4) The limitation in subsection (1) *does* not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued

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prior to January 1, 1932, *or to bonds issued for the repayment of tax protests lost by the county.*"

Section 11. Section 7-7-4201, MCA, is amended to read:

"**7-7-4201. Limitation on amount of bonded indebtedness.** (1) Except as otherwise provided, no city or town may issue bonds or incur other indebtedness for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

*(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town.*"

Section 12. Section 20-9-406, MCA, is amended to read:

"**20-9-406. Limitations on amount of bond issue.** (1) The maximum amount for which each school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. The 45% maximum, however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district *or to bonds issued for the repayment of tax protests lost by the district.* All bonds issued in excess of such amount shall be null and void, except as provided in this section.

(2) When the total indebtedness of a school district has reached the 45% limitation prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(3) Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded are applied towards the payment of such bonds and the refunding bond issue is decreased accordingly."

Section 13. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 14. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to any tax appeal or tax paid under protest after December 31, 1983.

Approved March 22, 1989.

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# CHAPTER NO. 214

[SB 200]

AN ACT INCREASING THE SALARY OF MEMBERS OF THE BOARD OF HORSERACING; AND AMENDING SECTION 23-4-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-4-102, MCA, is amended to read:

**"23-4-102. Chairman — quorum — costs — salary.** (1) The board shall organize by electing one of its members chairman. Three members of the board shall constitute a quorum for the transaction of business by the board.

(2) The board may incur costs, charges, and expenses reasonably necessary to carry out this chapter.

(3) Each member may be paid *$50* for each day in which he is actually and necessarily engaged in the performance of board duties and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in his official service."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 22, 1989.

# CHAPTER NO. 215

[SB 300]

AN ACT REVISING THE TERMS OF OFFICE OF THE MEMBERS OF THE MONTANA WHEAT AND BARLEY COMMITTEE; AMENDING SECTION 2-15-3002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-3002, MCA, is amended to read:

**"2-15-3002. Montana wheat and barley committee — composition — allocation.** (1) There is a Montana wheat and barley committee.

(2) The committee consists of seven members and three ex officio, nonvoting members.

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(3) The governor shall appoint one member from each of the following districts:

(a) District I, consisting of Daniels, Sheridan, and Roosevelt Counties;

(b) District II, consisting of Valley, Phillips, Blaine, and Hill Counties;

(c) District III, consisting of Liberty, Toole, Glacier, and Pondera Counties;

(d) District IV, consisting of Chouteau and Teton Counties;

(e) District V, consisting of Lewis and Clark, Cascade, Judith Basin, Fergus, Petroleum, Meagher, Broadwater, Wheatland, Golden Valley, and Musselshell Counties;

(f) District VI, consisting of Big Horn, Yellowstone, Stillwater, Carbon, Sweet Grass, Park, Gallatin, Madison, Jefferson, Silver Bow, Beaverhead, and all counties west of the continental divide;

(g) District VII, consisting of Garfield, McCone, Rosebud, Richland, Dawson, Wibaux, Prairie, Carter, Custer, Fallon, Powder River, and Treasure Counties.

(4) The ex officio members are:

(a) the director of the department of agriculture;

(b) the dean of agriculture of Montana state university;

(c) a representative of the grain trade in Montana elected by a majority of the appointed members.

(5) Each of the appointed members shall be a citizen of Montana, derive a substantial portion of his income from growing wheat or barley in this state, and be a resident of and have farming operations in the district from which appointed. No more than four of the appointed members may be of the same political party.

(6) A list of nominees for appointment may be submitted to the governor by the Montana farmers union, Montana farm bureau, Montana grange, and the Montana grain growers association. Names of nominees shall be submitted within 91 days before the expiration of a committeeman's term.

(7) The appointed members shall serve staggered terms of 3 years. *A member may not serve more than three consecutive 3-year terms.* The ex officio representative of the grain trade shall serve at the pleasure of the committee.

(8) A member may be removed by the governor, after a full public hearing before the governor, for malfeasance, misfeasance, or neglect of duty. Removal proceedings may not be started except upon duly verified written charges. The member shall be given a copy of the written charges at least

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10 days in advance of the hearing. At the hearing, the member may be represented by an attorney and may present witnesses in his behalf.

(9) A member who ceases to reside in the state or in the district from which he was appointed or who ceases to grow wheat or barley in the state or district is disqualified from membership and his office becomes vacant. If the member refuses to recognize his disqualification, the refusal is cause for removal.

(10) The committee is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

## CHAPTER NO. 216

[HB 71]

AN ACT TO REMOVE FROM THE ELECTIONEERING STATUTE THE UNCONSTITUTIONAL LANGUAGE THAT PROHIBITS SOLICITATION OF VOTING INFORMATION FROM AN ELECTOR WITHIN 200 FEET OF A POLLING PLACE OR ELECTION BUILDING; AND AMENDING SECTION 13-35-211, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-35-211, MCA, is amended to read:

**"13-35-211. Electioneering — soliciting information from electors.** (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof, which aids or promotes the success or defeat of any candidate or ballot issue to be voted upon at the election.

(2) No person may buy, sell, give, wear, or display at or about the polls on an election day any badge, button, or other insignia which is designed or tends to aid or promote the success or defeat of any candidate or ballot issue to be voted upon at the election.

(3) No person within a polling place or any building in which an election is being held may solicit from an elector, before or after he has marked his ballot and returned it to an election judge, information as to whether the elector intends to vote or has voted for or against a candidate or ballot issue."

Approved March 22, 1989.

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# CHAPTER NO. 217

[HB 124]

AN ACT DIRECTING THE CODE COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "PATROLMAN" TO "PATROL OFFICER" WHEREVER IT APPEARS IN THE MONTANA CODE ANNOTATED; AND AMENDING SECTIONS 2-15-1891, 7-3-1343, 7-3-4465, 7-32-103, 7-32-105, 7-32-106, 7-32-303, 15-24-203, 15-30-136, 15-70-311, 15-71-102, 17-6-203, 19-1-104, 19-1-301, 19-3-509, 19-6-101, 19-6-102, 19-6-305, 19-6-401, 19-6-404, 19-6-405, 19-6-505, 19-6-601, 19-6-707, 19-7-309, 19-8-306, 19-9-405, 19-13-404, 25-1-1104, 37-60-101, 44-1-105, 44-1-301, 44-1-303, 44-1-401, 44-1-402, 44-1-404, 44-1-503, 44-1-518, 44-1-601, 44-1-611, 44-1-705, 44-1-801, 44-1-803 THROUGH 44-1-806, 44-1-901, 44-1-903, 44-1-1001 THROUGH 44-1-1004, 44-1-1101 THROUGH 44-1-1103, 61-1-305, 61-1-407, 61-3-434, 61-5-116, 61-5-121, 61-6-112, 61-6-302, 61-8-105, 61-8-201, 61-8-344, 61-8-346, 61-8-349, 61-8-354, 61-8-705, 61-9-105, 61-12-701, 75-10-233, 76-13-601, 81-3-211, AND 81-3-231, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Name change — short form amendment.** Wherever it appears in 2-15-1891, 7-3-1343, 7-3-4465, 7-32-103, 7-32-105, 7-32-106, 7-32-303, 15-24-203, 15-30-136, 15-70-311, 15-71-102, 17-6-203, 19-1-104, 19-1-301, 19-3-509, 19-6-101, 19-6-102, 19-6-305, 19-6-401, 19-6-404, 19-6-405, 19-6-505, 19-6-601, 19-6-707, 19-7-309, 19-8-306, 19-9-405, 19-13-404, 25-1-1104, 37-60-101, 44-1-105, 44-1-301, 44-1-303, 44-1-401, 44-1-402, 44-1-404, 44-1-503, 44-1-518, 44-1-601, 44-1-611, 44-1-705, 44-1-801, 44-1-803 through 44-1-806, 44-1-901, 44-1-903, 44-1-1001 through 44-1-1004, 44-1-1101 through 44-1-1103, 61-1-305, 61-1-407, 61-3-434, 61-5-116, 61-5-121, 61-6-112, 61-6-302, 61-8-105, 61-8-201, 61-8-344, 61-8-346, 61-8-349, 61-8-354, 61-8-705, 61-9-105, 61-12-701, 75-10-233, 76-13-601, 81-3-211, and 81-3-231 or in law enacted by the 51st legislature, the code commissioner is directed to change the term "patrolman", "patrolman's", "patrolmen", or "patrolmen's" to "patrol officer", "patrol officer's", "patrol officers", or "patrol officers'".

Approved March 22, 1989.

# CHAPTER NO. 218

[HB 144]

AN ACT TO PLACE A REPRESENTATIVE OF THE SECRETARY OF STATE ON THE STATE RECORDS COMMITTEE; AND AMENDING SECTION 2-15-1013, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1013, MCA, is amended to read:

**"2-15-1013. Records committee — composition and meetings.** (1) There is a committee to be known as the state records committee composed of representatives of:

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(a) the department of administration;

(b) the legislative auditor;

(c) the attorney general;

(d) *the secretary of state; and*

*(e)* the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments shall be submitted in writing to the director of the department of administration.

(3) The committee shall meet at least quarterly.

(4) Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Such expenses shall be paid from the appropriations made for operation of their respective agencies."

Approved March 22, 1989.

# CHAPTER NO. 219

[HB 147]

AN ACT CLARIFYING THAT A CUSTODIAL PARENT HAS PRIORITY OVER A NONCUSTODIAL PARENT FOR APPOINTMENT AS PERSONAL REPRESENTATIVE OF A DECEASED CHILD'S ESTATE; AND AMENDING SECTION 72-3-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 72-3-502, MCA, is amended to read:

**"72-3-502. Priorities for appointment.** Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

*(3) the custodial parent of a minor decedent;*

*(4)* other devisees of the decedent;

*(5)* the surviving spouse of the decedent;

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*(6)* other heirs of the decedent;

*(7)* public administrator;

*(8)* 45 days after the death of the decedent, any creditor."

Approved March 22, 1989.

## CHAPTER NO. 220

[HB 216]

AN ACT TO CHANGE THE AUDIT PERIOD OF THE MONTANA HEALTH FACILITY AUTHORITY FROM AN ANNUAL AUDIT TO A BIENNIAL AUDIT; AMENDING SECTION 90-7-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 90-7-121, MCA, is amended to read:

**"90-7-121. Biennial audit.** The authority's books and records must be audited at least once each *biennium*, by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the authority's funds."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

## CHAPTER NO. 221

[HB 232]

AN ACT TO GENERALLY REVISE THE FEES OF THE CLERK OF THE DISTRICT COURT; IMPOSING A FILING FEE FOR A PETITION FOR LEGAL SEPARATION AND FOR A PERMIT TO CARRY A CONCEALED WEAPON; AMENDING SECTIONS 25-1-201, 27-9-103, AND 45-8-319, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-1-201, MCA, is amended to read:

**"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

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(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $60; for filing a complaint in intervention, from the intervenor, $60; for filing a petition for dissolution of marriage, a fee of $100; *and for filing a petition for legal separation, a fee of $100;*

(b) from each defendant or respondent, on his appearance, $40;

(c) on the entry of judgment, from the prevailing party, $25;

(d) for preparing copies of papers on file in his office, 50 cents per page for the first five pages of each file, per request, and 25 cents per page thereafter;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, *$25;*

(i) for issuing an execution or order of sale on a foreclosure of a lien, *$5;*

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $50, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $35;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through *(7)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the *district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations.* The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in

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and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage *or legal separation*, $75 must be deposited in the state general fund, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the *district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.*

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the *district court fund or the* county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on his appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15;

*(iv) on the entry of judgment as provided in subsection (1)(h), $20;*

*(v) for issuing an execution or order of sale as provided in subsection (1)(i), $3; and*

*(vi)* from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be deposited in the state general fund.

*(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations."*

Section 2. Section 27-9-103, MCA, is amended to read:

**"27-9-103. Filing and costs — district court.** The statement must be filed with the clerk of the court in which the judgment is to be entered, who shall endorse upon it and enter in the judgment book a judgment of such court for the amount confessed, with *$25* costs. *The clerk of the district court shall deposit the fee in the district court fund. If no district court fund exists, the fee must be deposited in the general fund for district court operations."*

Section 3. Section 45-8-319, MCA, is amended to read:

"**45-8-319. Permits to carry concealed weapons — fee — records — revocation.** (1) Any judge of a district court of this state may grant permission to carry or bear, concealed or otherwise, a pistol or revolver for a term not exceeding 1 year.

(2) All applications for such permission must be made by petition filed with the clerk of the district court. *The clerk of the district court shall collect a $25 fee when the petition is filed. The clerk shall deposit the fee in the district court fund. If no district court fund exists, the fee must be deposited in the general fund for district court operations.*

(3) The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral character and peaceable disposition.

(4) No such permission shall be granted any person who is not a citizen of the United States and who has not been an actual bona fide resident of the state of Montana for 6 months immediately next preceding the date of such application.

(5) A record of permission granted shall be kept by the clerk of the court. The record shall state the date of the application, the date of the permission, the name of the person to whom permission is granted, the name of the judge granting the permission, and the name of the person, if any, by whom good moral character and peaceable disposition are proved. The record must be signed by the person who is granted such permission.

(6) The clerk shall thereupon issue under his hand and the seal of the court a certificate, in a convenient card form so that the same may be carried in the pocket, stating:

"Permission to .... authorizing him to carry or bear, concealed or otherwise, a pistol or revolver for the period of .... from the date hereof has been granted by ...., a judge of the district court of the .... judicial district of the state of Montana, in and for the county of .....

Witness the hand of the clerk and the seal of said court this .... day of ...., 19...

.....
Clerk"

(7) The date of the certificate shall be the date of the granting of such permission. The certificate shall bear upon its face the signature of the person receiving the same.

(8) Upon good cause shown the judge granting such permission may, in his discretion without notice to the person receiving such permission, revoke the same. The date of the revocation shall be noted by the clerk upon the record kept by him.

(9) All permissions to carry or bear concealed weapons granted before March 3, 1919, are hereby revoked."

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Section 4. **Coordination instruction.** If House Bill No. 70 [LC 72] is passed and approved and if it includes a section that amends 45-8-319 by enacting a fee for the original issuance of a permit, then [section 3 of this act], amending 45-8-319, is void, the fee for the original issuance of a permit inserted in 45-8-319 by House Bill No. 70 [LC 72] is increased by $25, and the code commissioner is directed to insert in that part of 45-8-319 that relates to the distribution of the permit fee money a provision stating that: "$25 must be deposited in the district court fund and, if no such fund exists, then in the county general fund to be used for district court operations".

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved March 22, 1989.

# CHAPTER NO. 222

[HB 309]

AN ACT EXTENDING THE TIME PERIOD FOR TRANSMITTING A COPY OF A MUNICIPAL FINANCIAL STATEMENT TO THE DEPARTMENT OF COMMERCE AND TO THE MUNICIPAL GOVERNING BODY; AMENDING SECTION 7-6-4113, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-6-4113, MCA, is amended to read:

**"7-6-4113. Filing of annual financial statement.** (1) The city or town clerk must *within 120 days* following the close of each fiscal year, transmit one copy of the statement to the department of commerce and must present the other copy to the city or town council or commission.

(2) If a city or town clerk fails to file a copy of the statement with the department within the time specified, the department, without delay, shall examine the books, records, and accounts of the city or town. The department shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special audit under the provisions of subsections (4) and (5) of 2-7-503, and all of the provisions of subsections (4) and (5) of 2-7-503 apply to it."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved March 22, 1989.

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# CHAPTER NO. 223

[HB 352]

AN ACT TO CLARIFY WHAT CONSTITUTES A VACANCY IN THE OFFICE OF CONSERVATION DISTRICT SUPERVISOR AND CAUSE FOR REMOVAL OF A CONSERVATION DISTRICT SUPERVISOR; AND AMENDING SECTIONS 76-15-312 AND 76-15-314, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-15-312, MCA, is amended to read:

**"76-15-312. Term of office and vacancies.** (1) The term of office of each supervisor shall be 4 years, except that the supervisors who are first appointed by the department shall be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified.

*(2) A vacancy is created when any of the following events occurs before the expiration of the term of the incumbent:*

*(a) death;*

*(b) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent is mentally ill;*

*(c) resignation;*

*(d) removal from office;*

*(e) unexcused absence from three consecutive reguiar meetings of the board of supervisors;*

*(f) ceasing to be a resident of the district;*

*(g) conviction of a felony or a violation of official duties; or*

*(h) the decision of a court declaring void the incumbent's election or appointment.*

*(3) For the purpose of subsection (2)(e), a majority vote of the board of supervisors may excuse a supervisor from attending a meeting.*

*(4)* Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term."

Section 2. Section 76-15-314, MCA, is amended to read:

**"76-15-314. Removal of a supervisor.** A supervisor may be removed by the board *and a vacancy created under 76-15-312(2)(d)*, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason."

Approved March 22, 1989.

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# CHAPTER NO. 224

[HB 397]

AN ACT TO CLARIFY THE NAME CHANGE FOR WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA; AMENDING SECTIONS 20-25-201 AND 20-25-253 THROUGH 20-25-255, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-25-201, MCA, is amended to read:

**"20-25-201. Units constituting university system.** The Montana university system is composed of the following units, each designated by its legal name:

(1) University of Montana, located at Missoula;

(2) Montana state university, located at Bozeman;

(3) Montana college of mineral science and technology, located at Butte;

(4) Western Montana college *of the university of Montana*, located at Dillon;

(5) Eastern Montana college, located at Billings; and

(6) Northern Montana college, located at Havre."

Section 2. Section 20-25-253, MCA, is amended to read:

**"20-25-253. Purpose of western Montana college of the university of Montana.** Western Montana college *of the university of Montana* has for its primary purpose the instruction and training of teachers for the public schools of Montana."

Section 3. Section 20-25-254, MCA, is amended to read:

**"20-25-254. Donations to western Montana college of the university of Montana.** The regents may accept for and on behalf of western Montana college *of the university of Montana* any donations of lands and any other gifts for the use and benefit of the college."

Section 4. Section 20-25-255, MCA, is amended to read:

**"20-25-255. Acceptance of public lands.** (1) The regents shall receive, in the names of western Montana college *of the university of Montana* and eastern Montana college, all benefits derived from the distribution of lands contemplated in section 17 of an act of congress, approved February 22, 1889, entitled "An Act to Provide for the Division of Dakota Into Two States and to Enable the People of North Dakota, South Dakota, Montana, and Washington to Form Constitutions and State Governments and to be Admitted Into the Union on an Equal Footing With the Original States, and to Make Donations of Public Lands to Such States".

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(2) The regents may, in carrying out the provisions of Title 20, pledge one-half of all interest and income derived from *the* land grant for the payment in whole or in part of notes, bonds, or other obligations issued by the regents for residence halls or other facilities at western Montana college *of the university of Montana* or at eastern Montana college, provided that any pledge shall be subject to any prior pledge."

Section 5. **Name change.** In all sections of the Montana Code Annotated not contained in [this act] and in all provisions passed by the 51st legislature in which reference is made to western Montana college, the code commissioner shall change the reference to western Montana college of the university of Montana.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

# CHAPTER NO. 225

[HB 408]

AN ACT REQUIRING REVENUE FROM CERTAIN ALCOHOLIC BEVERAGE TAXES, LICENSES, AND PERMITS TO BE DEPOSITED IN THE ENTERPRISE FUND IN THE STATE TREASURY BEFORE TRANSFER TO THE GENERAL FUND; AMENDING SECTIONS 16-2-108 AND 16-4-501, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-2-108, MCA, is amended to read:

**"16-2-108. Disposition of money received.** All *money* received from the sale of liquor and table wine at the state liquor stores *must* be deposited in the enterprise fund in the state treasury to the credit of the department. The department *may* purchase liquor and table wine from *money* deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the department may be a debt or claim against the state of Montana but *must* be payable by the department solely from funds derived from the operation of state liquor stores. The department shall pay into the state treasury to the credit of the *enterprise* fund the receipts from all taxes and *license and permit fees* collected by it. *Taxes, license and permit fees,* and the net proceeds from the operation of state liquor stores *must be transferred to the general fund.*"

Section 2. Section 16-4-501, MCA, is amended to read:

**"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

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(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400; each subwarehouse, $400;

(c) each beer retailer, $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $15 a day for each day beer and table wine are sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual fee for resort retail all-beverages licenses within a given resort area shall be $2,000 for each license.

(7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided *in this section*, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided *in this section*, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of *the* city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

(c) except as provided *in this section*, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of *the* city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles thereof, measured in a straight line

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from the nearest entrance of the premises to be licensed to the nearest boundary of *the* city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of *the* city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and *must* be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and *must* be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsection (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for *a* license issued. The one-time license fee of $20,000 *may* not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

(8) The fee for one all-beverage license to a public airport *is* $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided *in this section* are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 ⅓% of any license fee delinquent on July 1 of the renewal year, 66 ⅔% of any license fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1 of the renewal year.

*(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."*

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved March 22, 1989.

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# CHAPTER NO. 226

[HB 416]

AN ACT TO REMOVE THE REQUIREMENT THAT OWNERSHIP OF THE WEST YELLOWSTONE AIRPORT BE TRANSFERRED TO A LOCAL PUBLIC ENTITY OR THAT THE DEPARTMENT OF COMMERCE PRESENT A PLAN TO THE 51ST LEGISLATURE TO CLOSE THE AIRPORT; AMENDING SECTION 10, HOUSE BILL NO. 621, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 10, House Bill No. 621, Laws of 1987, is amended to read:

"Section 10. **Appropriation.** There is appropriated from the stripper well payment contained in the federal special revenue fund to the department of commerce $65,000 for repair of the roof at West Yellowstone airport."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

# CHAPTER NO. 227

[HB 426]

AN ACT MAKING PERMANENT THE AUTHORITY OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ISSUE AVICULTURAL PERMITS FOR THE TAKING OF MIGRATORY GAME BIRDS FOR PROPAGATION PURPOSES; REPEALING SECTION 4, CHAPTER 262, LAWS OF 1985; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the authority of the Department of Fish, Wildlife, and Parks to issue avicultural permits for the taking of migratory game birds for propagation purposes is scheduled to terminate September 30, 1989; and

WHEREAS, the Legislature finds it appropriate to continue the avicultural permit system on a permanent basis.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 4, Chapter 262, Laws of 1985, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

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# CHAPTER NO. 228

[HB 443]

AN ACT TO ALLOW COUNTY COMMISSIONERS TO APPOINT MORE THAN ONE CONSTABLE FOR EACH JUSTICE'S COURT; AMENDING SECTION 7-4-2203, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2203, MCA, is amended to read:

"**7-4-2203. County officers.** (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and other qualifications as may be prescribed by law:

(a) one county attorney;

(b) one clerk of the district court;

(c) one county clerk;

(d) one sheriff;

(e) one treasurer;

(f) one auditor if authorized by 7-6-2401;

(g) one county superintendent of schools;

(h) one county surveyor;

(i) one assessor;

(j) one coroner;

(k) one public administrator; and

(l) at least one justice of the peace.

(2) The commissioners may appoint at their discretion constables. *More* than one constable may be appointed for each justice's court.

(3) All elective township officers may be elected at each general election as now provided by law."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved March 22, 1989.

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# CHAPTER NO. 229

[HB 488]

AN ACT TO CHANGE THE TIME DEADLINES FOR REPLACING A CANDIDATE OR FOR WITHDRAWAL OF A CANDIDATE PRIOR TO A GENERAL ELECTION; AND AMENDING SECTIONS 5-2-406, 13-10-325, AND 13-10-327, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-2-406, MCA, is amended to read:

**"5-2-406. Elections to fill vacancies in senate.** (1) Whenever a vacancy occurs *85* days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 75 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election shall be utilized.

(b) Whenever the vacancy occurs on or after the 75th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the secretary of state on or before the *85th* day prior to the general election.

(2) Whenever a vacancy occurs on or after the *85th* day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term."

Section 2. Section 13-10-325, MCA, is amended to read:

**"13-10-325. Withdrawal from nomination.** (1) A candidate for nomination or candidate for election to an office may withdraw from the election by sending a statement of withdrawal to the officer with whom his declaration, petition, or acceptance of nomination was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. It shall be sworn or affirmed before an officer empowered to administer oaths. A candidate may not withdraw later than *85* days before *a general* election *or 75 days before a primary election.*

(2) Filing fees paid by the candidate may not be refunded."

Section 3. Section 13-10-327, MCA, is amended to read:

**"13-10-327. Vacancy after primary and prior to general election.** (1) If a party candidate dies or withdraws after the primary and

before the general election, the affected political party shall appoint someone to replace the candidate in one of the following ways:

(a) For offices to be filled by the state at large, the state central committee shall make the appointment as provided by the rules of the party.

(b) For offices to be filled in districts including more than one county, a committee appointed by the county central committees of all counties in the district shall make the appointment. Procedures for the appointment of the committee and making the appointment shall be provided in party rules.

(c) For offices to be filled in counties, municipalities, or districts wholly within a county, the appointment shall be made under rules adopted by the county central committee.

(2) Appointments to fill vacancies must be made no later than *75* days before the election. A candidate may not officially withdraw *85* days or less before a general election. However, if a candidate for partisan office dies less than *85* days before the general election, the affected political party shall appoint a candidate within 5 days after being notified of the vacancy. The procedures provided in 13-12-204 shall be used to place the name of the appointee on the ballot if necessary.

(3) The appointing committee shall send a certificate to the officer with whom a declaration for nomination for the office would be filed, with the information required on a declaration for nomination and the name of the candidate for whom the appointee is to be substituted. The appointee shall send a signed and acknowledged acceptance of the appointment and the filing fee for the office.

(4) The officer receiving the certificate of appointment, accompanied by a statement of acceptance and the filing fee, shall certify the name of the appointee for the ballot."

Approved March 22, 1989.

# CHAPTER NO. 230

[HB 540]

AN ACT CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES SHALL APPROVE A WATER SUPPLY, WATER DISTRIBUTION, SEWER, DRAINAGE, WASTEWATER, OR SEWAGE DISPOSAL SYSTEM BEFORE ITS CONSTRUCTION, ALTERATION, OR EXTENSION IS COMMENCED; PROHIBITING VIOLATION OF THE LAW OR RULES PROTECTING PUBLIC WATER SUPPLIES OR OF THE TERMS OF AN APPROVAL ISSUED RELATING TO PUBLIC WATER SUPPLIES; AND AMENDING SECTION 75-6-112, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-6-112, MCA, is amended to read:

**"75-6-112. Prohibited acts.** A person *may* not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

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(2) discharge sewage, drainage, industrial waste, or other waste into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

(3) build or operate any railroad, logging road, logging camp, or electric or manufacturing plant of any kind on any watershed of a public water supply system unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) *commence construction, alteration, or extension of* any system of water supply, water distribution, sewer, drainage, wastewater, or sewage disposal *before he submits to the department* necessary maps, plans, and specifications for its review and *the department approves those maps, plans, and specifications*;

(5) operate or maintain any public water supply system which exceeds a maximum contaminant level established by the board unless he has been granted or has an application pending for a variance or exemption pursuant to this part;

*(6) violate any provision of this part or rule adopted under this part; or*

*(7) violate any condition or requirement of an approval issued pursuant to this part.*"

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 22, 1989.

# CHAPTER NO. 231

[HB 611]

AN ACT PROVIDING THAT PROTESTS AGAINST THE ISSUANCE OR TRANSFER OF AN ALCOHOLIC BEVERAGE LICENSE MAY BE MADE ONLY BY CREDITORS AND RESIDENTS OF THE COUNTY FROM WHICH THE APPLICATION FOR A LICENSE COMES AND ADJOINING MONTANA COUNTIES; AMENDING SECTION 16-4-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-4-207, MCA, is amended to read:

"**16-4-207. Notice of application — publication — protest.** (1) When an application has been filed with the department for a license to

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sell alcoholic beverages at retail or to transfer *a retail* license, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that *the* applicant has made application for *a retail* license and that protests against the issuance of a license to the applicant *by a person who has extended credit to a transferor or residents of the county from which the application comes or adjoining Montana counties* may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license shall be published once a week for 4 consecutive weeks. Notice of application for transfer of a license shall be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

Notice is hereby given that on the .... day of ....., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold), and protests *by a person who has extended credit to a transferor or residents of ..... counties*, if any there be, against the issuance of such license may be mailed to ....., department of revenue, Helena, Montana, on or before the .... day of ....., 19...

Dated .... Signed .....
ADMINISTRATOR

(2) Each applicant shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests *by a person who has extended credit to a transferor or residents of the county from which the application comes or adjoining Montana counties* against the issuance or transfer of the license are received, the department shall hold a public hearing at its office in Helena."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved March 22, 1989.

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# CHAPTER NO. 232

[SB 33]

AN ACT TO RENAME THE PHEASANT ENHANCEMENT PROGRAM AS THE UPLAND GAME BIRD ENHANCEMENT PROGRAM; TO PROVIDE FOR THE FUNDING OF UPLAND GAME BIRD HABITAT ENHANCEMENT THROUGH A PORTION OF PROGRAM PROCEEDS; AMENDING SECTIONS 87-1-246 THROUGH 87-1-250, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-246, MCA, is amended to read:

**"87-1-246. Funding of upland game bird enhancement program.** The amount of money specified in this section from the sale of each hunting license listed must be used exclusively by the department to preserve and enhance *upland game bird* populations in Montana in accordance with 87-1-246 through 87-1-249, subject to appropriation by the legislature:

(1) Class A-1, resident upland game bird, $2;

(2) Class B-1, nonresident upland game bird, $23;

(3) Class AAA, sportsman's, $2; and

(4) Class B-10, nonresident big game combination, $23."

Section 2. Section 87-1-247, MCA, is amended to read:

**"87-1-247. Authorized use of funds.** (1) Not more than 10% of the money generated under 87-1-246 may be used by the department to:

(a) prepare and disseminate information to landowners and organizations concerning the *upland game bird* enhancement program;

(b) review potential pheasant release sites;

(c) assist applicants in preparing management plans for project areas; and

(d) evaluate the *upland game bird* enhancement program.

(2) The remainder of the money raised must be used:

*(a)* to share, *at* $3 a bird, in the cost of releasing pheasants in suitable habitat, in such numbers and under conditions determined by the department *under 87-1-248(1); and*

*(b) to revert, at the end of each fiscal year, all unexpended funds to the habitat portion of the program outlined in 87-1-248(2) for the development, enhancement, and conservation of upland game bird habitat in Montana."*

Section 3. Section 87-1-248, MCA, is amended to read:

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**"87-1-248. Qualification of upland game bird enhancement projects.** (1) A project eligible for funding under *the pheasant release* program must contain the proper combination of winter cover, food, nesting cover, and other pheasant habitat components determined necessary by the department to provide for a viable permanent pheasant population.

*(2) Habitat enhancement efforts must include assistance to applicants in the establishment of suitable nesting cover, winter cover, and feeding areas through cost-sharing programs, leases, and conservation easements.*

*(3)* No project containing hunting preserves or any commercial hunting enterprise or wherein hunting rights are leased or paid for is eligible for funding.

*(4)* Preference must be given for project applications submitted by youth organizations, 4-H clubs, sportsmen's groups, and other associations of sufficient size to guarantee completion of all project requirements. However, individual landowners may also apply, so long as the land in the project area remains open to public hunting in accordance with reasonable use limitations imposed by the landowner."

Section 4. Section 87-1-249, MCA, is amended to read:

**"87-1-249. Rules.** The department shall adopt rules for the administration of the *upland game bird* enhancement program created in 87-1-246 through 87-1-249."

Section 5. Section 87-1-250, MCA, is amended to read:

**"87-1-250. Report.** The department shall report to the fish and game committee of each house of the legislature concerning *upland game bird* enhancement activities undertaken pursuant to 87-1-246 through 87-1-249 during the preceding biennium, together with any recommendations concerning the operation of the program."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

# CHAPTER NO. 233

[SB 45]

AN ACT TO REMOVE THE REQUIREMENT THAT A PETITION FOR ADOPTION BE FILED WITHIN 1 YEAR OF A CHILD'S PLACEMENT FOR ADOPTION WITH THE PETITIONER; AND AMENDING SECTION 40-8-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-8-121, MCA, is amended to read:

**"40-8-121. Petition for adoption.** (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

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(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of family services or to the child placing agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court."

Approved March 22, 1989.

## CHAPTER NO. 234

[SB 61]

AN ACT TO DELETE THE REQUIREMENT THAT MEMBERS OF THE HIGHWAY COMMISSION GIVE A PERFORMANCE BOND; REPEALING SECTION 60-2-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 60-2-102, MCA, is repealed.

Approved March 22, 1989.

## CHAPTER NO. 235

[SB 73]

AN ACT CORRECTING THE FORMULA FOR DETERMINING MAXIMUM ALLOWABLE GROSS VEHICLE WEIGHT; AND AMENDING SECTIONS 61-10-107 AND 61-10-1101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-10-107, MCA, is amended to read:

**"61-10-107. (Temporary) Maximum gross weight — when permit required.** (1) An axle may not carry a load in excess of 20,000

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pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles shall be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more.

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of highways based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee shall be $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify and permits issued under 61-10-124(4) must specify highway routing.

(4) A special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading shall be for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes.

**61-10-107. (Effective July 1, 1989) Maximum gross weight — when permit required.** (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. For purposes of this section, axles 40 inches or less apart are considered as a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles shall be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the

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first and last axles of such consecutive sets of tandem axles is 36 feet or more.

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of highways based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee shall be $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify highway routing.

(4) A special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles from a harvesting combine or other harvesting machinery to the point of first unloading shall be for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways which are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 2. Section 61-10-1101, MCA, is amended to read:

**"61-10-1101. Multistate Highway Transportation Agreement — enactment and text.** The Multistate Highway Transportation Agreement is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, do mutually agree as follows:

Article I. Findings and Purposes

Section 1. **Findings.** The participating jurisdictions find that:

(a) the expanding regional economy depends on expanding transportation capacity;

(b) highway transportation is the major mode for movement of people and goods in the western states;

(c) uniform application in the West of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption, and related transportation costs, which are necessary to permit increased productivity;

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(d) a number of western states, already having adopted substantially the 1964 bureau of public roads recommended vehicle size and weight standards, still find current federal limits more restrictive;

(e) the 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly 92% complete; and

(f) the participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. **Purposes.** The purposes of this agreement are to:

(a) adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines to be most appropriate to its economy and highway system;

(b) establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards;

(c) promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement;

(d) secure uniformity, insofar as possible, of administrative procedures in the enforcement of recommended vehicle size and weight standards;

(e) provide means for the encouragement and utilization of research that will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in section 1 of this article.

Article II. Definitions

Section 1. As used in this agreement:

(a) "designated representative" means a legislator or other person authorized to represent the jurisdiction;

(b) "jurisdiction" means a state of the United States or the District of Columbia;

(c) "vehicle" means any vehicle as defined by statute to be subject to size and weight standards that operates in two or more participating jurisdictions.

Article III. General Provisions

Section 1. **Qualifications for membership.** Participation in this agreement is open to jurisdictions that subscribe to the findings, purposes, and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

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Section 2. **Cooperation.** The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. **Effect of headings.** Article and section headings contained herein may not be considered to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.

Section 4. **Vehicle laws and regulations.** This agreement does not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations thereof.

Section 5. **Interpretation.** The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

Section 6. **Amendment.** This agreement may be amended by unanimous joint action of the participating jurisdictions, acting through the officials thereof authorized to enter into this agreement, subject to the requirements of section 4, Article III. Any amendment shall be placed in writing and become a part hereof.

Section 7. **Restrictions, conditions, or limitations.** Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition, or limitation on the general terms of this agreement, if any.

Section 8. **Additional jurisdictions.** Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

Article IV. Cooperating Committee

Section 1. Pursuant to section 2, Article III, the designated representatives of the participating jurisdictions shall constitute a committee that shall have the power to:

(a) collect, correlate, analyze, and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters;

(b) recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter when, in their collective judgment, appropriate or sufficient research or testing has not been undertaken;

(c) recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules that would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

Section 2. Each participating jurisdiction shall be entitled to one vote only. No action of the committee shall be binding unless a majority of the

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total number of votes cast by participating jurisdictions are in favor thereof.

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman, and a secretary.

Section 4. The committee shall submit annually to the legislature of each participating jurisdiction, no later than November 1, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it considers appropriate or desirable. Copies of all such reports shall be made available to the transportation committee of the western conference, council of state governments, and to the western association of state highway and transportation officials.

Article V. Objectives of the Participating Jurisdictions

Section 1. **Objectives.** The participating jurisdictions hereby declare that:

(a) it is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single-axle weight not in excess of 20,000 pounds, a tandem-axle weight not in excess of 34,000 pounds, and a gross vehicle or combination weight not in excess of that resulting from application of the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

where

W = maximum weight in pounds carried on any group of two or computed to nearest 500 pounds;

L = distance in feet between the extremes of any group of two or more consecutive axles;

N = number of axles in group under consideration;

(b) it is the further objective of the participating jurisdictions that in the event the operation of a vehicle or combination of vehicles according to the provisions of subsection (a) of this section would result in withholding or forfeiture of federal-aid funds pursuant to section 127, Title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction that could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to;

(c) the objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority

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of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected;

(d) it is the further objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section, and to that end the participating jurisdictions hereby agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including but not limited to the development of uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules for the operation of vehicles, including equipment requirements, driver qualifications, and operating practices; and such other matters as may be pertinent;

(e) in recognition of the limited prospects of federal revision of section 127, Title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to secure congressional approval of this agreement and specifically of the vehicle size and weight standards set forth in subsection (a) of this section;

(f) in recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis and further that procedures adopted under this agreement be compatible with national standards.

Article VI. Entry Into Force and Withdrawal

Section 1. This agreement shall enter into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement shall become effective as to any other jurisdiction upon its enactment thereof, except as otherwise provided in section 8, Article III.

Section 2. Any participating jurisdiction may withdraw from this agreement by canceling the same but no such withdrawal shall take effect until 30 days after the designated representative of the withdrawing jurisdiction has given notice in writing of the withdrawal to all other participating jurisdictions.

Article VII. Construction and Severability

Section 1. This agreement shall be liberally construed so as to effectuate the purposes thereof.

Section 2. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability thereto to any government, agency, person, or circumstance is

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held invalid, the validity of the remainder of this agreement shall not be affected thereby. If this agreement shall be held contrary to the constitution of any jurisdiction participating herein, the agreement shall remain in full force and effect as to the jurisdictions affected as to all severable matters.

Article VIII. Filing of Documents

Section 1. A copy of this agreement, its amendments, and rules promulgated thereunder and interpretations thereof shall be filed in the highway department in each participating jurisdiction and shall be made available for review by interested parties.

Article IX. Existing Statutes Not Repealed

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits shall continue to be of force and effect until amended or repealed by law.

Article X. State Government Departments Authorized to Cooperate With Cooperating Committee

Section 1. Within appropriations available therefor, the departments, agencies, and officers of the government of this state shall cooperate with and assist the cooperating committee within the scope contemplated by Article IV, subsections 1(a) and 1(b) of the agreement. The departments, agencies, and officers of the government of this state are authorized generally to cooperate with said cooperating committee."

Approved March 22, 1989.

# CHAPTER NO. 236

[SB 79]

AN ACT TO ALLOW MEMBERS OF A TRADE OR PROFESSIONAL ORGANIZATION TO AGREE TO SUBMIT FUTURE CONTROVERSIES BETWEEN MEMBERS TO ARBITRATION; AND AMENDING SECTION 27-5-114, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-5-114, MCA, is amended to read:

**"27-5-114. Validity of arbitration agreement — exceptions.** (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the *agreement* is made is valid and enforceable except upon such grounds as exist at law or in equity for the

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revocation of a contract. *Except as permitted under subsection (3), this* subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

(b) any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies;

(c) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $35,000 or less; and

(d) claims for workers' compensation.

*(3) A written agreement between members of a trade or professional organization to submit to arbitration any controversies arising between members of the trade or professional organization after the agreement is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.*

*(4)* Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration."

Approved March 22, 1989.

# CHAPTER NO. 237

[SB 81]

AN ACT TO CONTINUE IN EFFECT FOR AN ADDITIONAL 2 YEARS THE PROVISION THAT PRECLUDES THE DEPARTMENT OF HIGHWAYS AND LOCAL AUTHORITIES FROM RESTRICTING THE OPERATION OF VEHICLES CARRYING PERISHABLE AGRICULTURAL SEEDS ON A PUBLIC HIGHWAY IF CERTAIN CONDITIONS ARE MET; AMENDING SECTION 4, CHAPTER 468, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 4, Chapter 468, Laws of 1987, is amended to read:

"Section 4. **Termination.** This act terminates June 30, *1991*."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

# CHAPTER NO. 238

[SB 98]

AN ACT TO REQUIRE THE ISSUANCE OF A TAX-PAID STICKER FOR A MOBILE HOME OR HOUSETRAILER ONLY WHEN THE MOBILE HOME OR HOUSETRAILER IS MOVED; AND AMENDING SECTIONS 15-24-202 AND 15-24-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-24-202, MCA, is amended to read:

**"15-24-202. Payment of tax — interest and penalty — display of tax-paid sticker.** (1) (a) The owner of a mobile home or housetrailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments, except as provided in 15-24-206.

(b) The first payment is due within 30 days from the date of the notice of taxes due.

(c) The second payment is due no later than September 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

(2) Taxes assessed against a mobile home after the second payment date must be prorated to reflect the remaining portion of the tax year. The prorated taxes must be added to the following year's tax roll and, except as provided in 15-24-206, are due with and must be collected with the first payment due in that year.

(3) The department of revenue shall issue tax-paid stickers to the county treasurers. *If a mobile home or housetrailer is to be moved and all taxes, interest, and penalties on the mobile home or housetrailer are paid in full, the treasurer* shall issue *a tax-paid sticker* to the *owner* of *the* mobile *home or housetrailer. Prior to and while in the process of moving the mobile home or housetrailer, the* owner shall display the *tax-paid* sticker, which must be visible from the exterior of the mobile home or housetrailer. No mobile home movement declaration of destination provided for in 15-24-206 may be issued unless the taxes have been paid in full to the county treasurer.

*(4)* On the movement of a mobile home or housetrailer in violation of this part, the county treasurer for the county where the mobile home or housetrailer first comes to rest shall issue a written notice to the owner, showing the amount of delinquent taxes, special assessments, penalties, and interest due. In addition to the penalties provided in 15-16-102, 20% or $50, whichever is greater, must be added to the delinquent taxes as penalty for

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violation of this part. On receipt of the delinquent taxes, special assessments, penalties, and interest, the county treasurer shall forward all delinquent taxes, special assessments, penalties, and interest collected under 15-16-102 to the county treasurer for the county of origin. The county of destination shall retain the penalty."

Section 2. Section 15-24-204, MCA, is amended to read:

**"15-24-204. Failure to display or produce declaration, sticker, or receipt — penalty.** (1) Whoever makes a false or fraudulent declaration of destination or, when required, fails to execute a declaration of destination or fails to display or produce a declaration of destination or tax-paid receipt, if a tax-paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than 6 months or by a fine of not more than $500, or both.

(2) Whoever fails to display a property-tax-paid sticker *while in the process of moving a mobile home or housetrailer* or to produce a property-tax-paid receipt from 15 days after the due date for personal property taxes of 1 year to the due date for personal property taxes of the next year, when the display of a tax-paid receipt is required, commits a misdemeanor punishable by a fine of not less than $10 or more than $50 or confinement in the county jail for not more than 30 days or both such fine and imprisonment."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 22, 1989.

# CHAPTER NO. 239

[SB 121]

AN ACT TO REMOVE FROM STATUTES ALL LANGUAGE RELATING TO THE MERIT SYSTEM; ABOLISHING THE MERIT SYSTEM COUNCIL AND THE MERIT SYSTEM THAT WERE DECLARED UNCONSTITUTIONAL BY THE DISTRICT COURT; AMENDING SECTIONS 2-15-112, 2-15-2205, AND 2-18-404, MCA; AND REPEALING SECTIONS 2-15-1006, 2-18-105, AND 39-71-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-112, MCA, is amended to read:

**"2-15-112. Duties and powers of department heads.** (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

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(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that he requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with 2-15-104(2).

(h) subject to law, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions."

Section 2. Section 2-15-2205, MCA, is amended to read:

**"2-15-2205. Division of visual services.** There is a division of visual services within the department of social and rehabilitation services.

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The division head is an administrator appointed by the director of the department of social and rehabilitation services in accordance with classification requirements. The division is responsible for administration of rehabilitative and other services for blind and visually handicapped persons."

Section 3. Section 2-18-404, MCA, is amended to read:

**"2-18-404. Payroll roster — changes certified by appointing powers.** (1) The state auditor shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster shall include exempt employees but shall not necessarily include emergency appointees or the equivalent.

(2) Each appointing power shall correctly and promptly certify to the state auditor all changes, modifications, additions, and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws and rules.

(3) The state central payroll system shall disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the state auditor by the respective appointing powers."

Section 4. **Repealer.** Sections 2-15-1006, 2-18-105, and 39-71-207, MCA, are repealed.

Approved March 22, 1989.

# CHAPTER NO. 240

[SB 145]

AN ACT PROVIDING THAT A JUDGMENT DEBTOR IS NOT ENTITLED TO EXEMPT FROM EXECUTION VETERANS' OR SOCIAL SECURITY BENEFITS IF THE DEBT FOR WHICH EXECUTION IS LEVIED IS FOR CHILD SUPPORT OR CHILD SUPPORT-RELATED MAINTENANCE; AND AMENDING SECTION 25-13-608, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 25-13-608, MCA, is amended to read:

**"25-13-608. Property exempt without limitation — exceptions.** *(1)* A judgment debtor is entitled to exemption from execution of the following:

*(a)* professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

*(b)* benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, *except as provided in subsection (2)*;

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*(c)* veterans' benefits, *except as provided in subsection (2);*

*(d)* disability or illness benefits;

*(e)* benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

*(f)* maintenance and child support; and

*(g)* a burial plot for the judgment debtor and his family.

*(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), are not exempt from execution if the debt for which execution is levied is for:*

*(a) child support; or*

*(b) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child."*

Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 22, 1989.

## CHAPTER NO. 241

[SB 156]

AN ACT TO REPEAL SECTION 41-2-112, MCA, WHICH REQUIRES THE COMMISSIONER OF LABOR AND INDUSTRY TO COMPILE AND PRESERVE REPORTS MADE BY COUNTY SUPERINTENDENTS OF SCHOOLS REGARDING THE NAME, AGE, DATE OF BIRTH, SEX, AND THE NAMES OF THE PARENTS OR GUARDIANS OF EACH CHILD UNDER 16 YEARS OF AGE WHO IS OR MAY BECOME A RESIDENT OF THE STATE.

WHEREAS, section 41-2-112, MCA, requires the Commissioner of Labor and Industry to compile and preserve reports made by the County Superintendents of Schools regarding the name, age, date of birth, sex, and the names of the parents or guardians of each child under 16 years of age who is or may become a resident of the state; and

WHEREAS, County Superintendents of Schools do not have the authority to make reports to the Commissioner of Labor and Industry as contemplated under section 41-2-112, MCA; and

WHEREAS, in fact, County Superintendents of Schools do not make such reports to the Commissioner of Labor and Industry.

THEREFORE, the Legislature of the State of Montana finds it appropriate to repeal section 41-2-112, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 41-2-112, MCA, is repealed.

Approved March 22, 1989.

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# CHAPTER NO. 242

[SB 232]

AN ACT TO ACKNOWLEDGE NOTARIAL ACTS PERFORMED FOR USE IN MONTANA BY A NOTARY PUBLIC AUTHORIZED BY ANY JURISDICTION TO PERFORM NOTARIAL ACTS; AND AMENDING SECTIONS 1-5-101 AND 1-5-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 1-5-101, MCA, is amended to read:

**"1-5-101. By whom and where acknowledgments may be taken.** (1) The proof of acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court or a judge of the district court.

(2) The proof of acknowledgment of an instrument may be made in this state within the city, county, or district for which the officer was elected or appointed, before either:

(a) a clerk of a court of record;

(b) a county clerk;

(c) a notary public *authorized by any jurisdiction to perform notarial acts*;

(d) a justice of the peace; or

(e) a United States commissioner."

Section 2. Section 1-5-102, MCA, is amended to read:

**"1-5-102. Acknowledgments of notarial acts** . The proof of acknowledgment of an instrument may be *performed for use in this state with the same effect as if performed by a notary public in this state* before:

(1) a justice, judge, or clerk of any court of record of the United States;

(2) a justice, judge, or clerk of any court of record of any state or territory;

(3) a notary public *authorized by any jurisdiction to perform notarial acts*; or

(4) any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment."

Approved March 22, 1989.

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# CHAPTER NO. 243

[SB 267]

AN ACT REMOVING THE PROHIBITIONS AGAINST A BUILDING AND LOAN ASSOCIATION ACCEPTING FARM LAND AS SECURITY AND OFFERING CHECKING ACCOUNTS; AMENDING SECTIONS 32-2-401 AND 32-2-406, MCA; AND REPEALING SECTION 32-2-419, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-2-401, MCA, is amended to read:

**"32-2-401. Powers and duties of building and loan associations.** A building and loan association may:

(1) have continual succession by its corporate name;

(2) sue and be sued in any court;

(3) make and use a common seal and alter it at pleasure;

(4) appoint those officers or agents the business of the corporation requires and pay them suitable compensation;

(5) enter into obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation;

(6) issue stock to stockholders and savings certificates to members on the terms and conditions the articles of incorporation and bylaws provide;

(7) assess and collect from members interest on loans at the times and in the amount provided for in the articles of incorporation and bylaws;

(8) permit members to withdraw all or part of their savings at the times and upon the terms as the articles of incorporation and bylaws may provide;

(9) cancel savings certificates upon which all credits have been withdrawn or upon which loans have been canceled or savings upon which no payments have been made for a period of 6 months, by returning to the members all credits, if any, and reissue the certificates as new savings certificates;

(10) issue savings certificates to minors and permit them to be withdrawn as other savings certificates. The receipt by the minor is a valid acquittance if his rights have been fully secured to him.

(11) acquire, hold, encumber, and convey that real estate and personal property necessary for the transaction of its business or necessary to enforce or protect its securities;

(12) borrow money, only when necessary and not exceeding 20% of its assets, except when borrowing from the federal home loan bank as provided in 32-2-405, and issue its promissory note for the loan;

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(13) make loans to members on the security of the savings accounts of the association and also on their notes secured by first mortgages on improved real estate, including suburban homes *or* farm lands *but not on* mining property, for not to exceed 75% of the actual value of the real estate and upon the terms and conditions which may be provided in the articles of incorporation and bylaws;

(14) cancel those loans and release the securities on those terms the board of directors may provide;

(15) invest the money of the association in accordance with 32-2-406;

(16) loan money to other building and loan associations;

(17) make distribution of all interest and dividends earned after payment of expenses and setting aside a sum for the contingent funds as provided in this chapter;

(18) amend its articles of incorporation by changing the name, place of business, the number of directors, and increase or decrease the capital stock, and provide for its own continual succession by a majority vote of its directors. However, those amendments are of no effect until approved by the department.

(19) dissolve the corporation in accordance with the provisions of this chapter;

(20) provide, by articles of incorporation and bylaws adopted or amended by its board of directors, for the proper exercise of the powers granted in this section and the conduct and management of its affairs;

(21) exercise those other powers which are necessary and proper to enable the corporation to carry out the purpose of its organization."

Section 2. Section 32-2-406, MCA, is amended to read:

**"32-2-406. Investments.** (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal savings and loan insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate which has been sold under contract, including suburban homes *or* farm lands *but not including* mining property. However, the total amount remaining so invested, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount so invested may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property so purchased, whichever is the lesser.

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(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations."

Section 3. **Repealer.** Section 32-2-419, MCA, is repealed.

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 22, 1989.

# CHAPTER NO. 244

[SB 278]

AN ACT CREATING A GUARANTY FUND FOR EMPLOYERS WHO SELF-INSURE UNDER THE WORKERS' COMPENSATION LAWS TO PROVIDE FOR PAYMENT OF CLAIMS AGAINST SELF-INSURED EMPLOYERS WHO BECOME INSOLVENT AND UNABLE TO PAY WORKERS' COMPENSATION CLAIMS; ESTABLISHING A BOARD OF DIRECTORS TO ADMINISTER THE FUND; PROVIDING AN ASSESSMENT AGAINST SELF-INSURED EMPLOYERS TO FINANCE THE FUND; AND PROVIDING EFFECTIVE DATES.

## STATEMENT OF INTENT

A statement of intent accompanies this bill because [section 6] delegates to the newly established board of directors of the Montana self-insurers guaranty fund rulemaking authority to administer the guaranty fund.

The fund is a private, nonprofit legal entity. The members of the board of directors must be elected by members of the fund, except for the initial appointments, which must be made by the governor.

It is the intent of [section 4] that the governor have the authority to implement staggered terms for board members during the initial appointing process.

It is the intent of [section 6] that the board of directors of the Montana self-insurers guaranty fund have the general authority to adopt rules to implement and enforce [this act]. The rules should provide:

(1) a process for electing members and officers of the board;

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(2) a method for filling any vacancy on the board;

(3) a description of the duties of board members;

(4) a method of keeping records of the board;

(5) a method for transacting the business of the board; and

(6) a description of the banking and investment policy of the board.

The rules should also establish the general duties and powers of operation of the fund. These include establishing a method of assessing contributions to the fund and a method of prorating payment if available funds are not sufficient to pay all claims.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Montana Self-Insurers Guaranty Fund Act".

Section 2. **Purpose — construction.** (1) The purposes of [this act] are to provide a mechanism for the payment of covered workers' compensation claims of employers bound by compensation plan No. 1 who are unable to pay the claims because of insolvency, to establish a fund from which the claims may be paid, and to establish a board to assess the cost of the protection among those employers.

(2) [This act] must be liberally construed to effect its purposes. The statement of its purposes constitutes an aid and a guide to the act's interpretation.

Section 3. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of directors of the Montana self-insurers guaranty fund.

(2) "Fund" means the Montana self-insurers guaranty fund established pursuant to [section 5].

(3) "Insolvent private self-insurer" means an employer:

(a) (i) that is unable to pay workers' compensation claims because:

(A) it has been determined to be insolvent by a court of competent jurisdiction; or

(B) bankruptcy proceedings have been instituted by or against it; or

(ii) whose claims are not being paid on its behalf; and

(b) whose security has been exhausted pursuant to 39-71-2108.

(4) "Member" means an employer bound by compensation plan No. 1 that participates in the Montana self-insurers guaranty fund.

(5) "Private self-insurer" means a private employer bound by compensation plan No. 1 that has secured the payment of workers' compensation claims pursuant to 39-71-2101.

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Section 4. **Board of directors of fund.** (1) There is a board of directors of the Montana self-insurers guaranty fund.

(2) The board consists of five members who are representatives of private self-insurers and who shall serve staggered 4-year terms.

(3) Board members are elected by the members of the fund, with each member having one vote.

(4) Board members may be reimbursed from the assets of the fund for the actual expenses incurred in connection with their duties as board members.

Section 5. **Establishment of fund — employer participation required.** (1) There is a nonprofit unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in [sections 8 and 9]. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under [section 4].

(2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

(3) The division shall consult with the board regarding the suitability of allowing an employer to self-insure or to continue as a self-insured employer.

Section 6. **Rulemaking — powers of fund.** (1) The board shall establish the rules necessary to carry out the purposes of [this act] and to meet the responsibilities of the fund.

(2) The fund may carry out its responsibilities directly or by contract. It may, if it considers necessary, purchase services and insurance and borrow funds.

(3) The fund may receive confidential information concerning the financial condition of a private self-insurer whose liabilities to pay compensation may devolve upon the fund. The board shall adopt rules to prevent dissemination of the information.

Section 7. **Duties, liabilities, and rights of fund.** (1) The fund shall assume the workers' compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.

(2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.

(3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:

(a) to appear and deny, defend, and appeal a claim; and

(b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.

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Section 8. **Initial fee — assessment.** (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of [this act]. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity compensation paid by each member during the previous calendar year. Funds obtained by assessment pursuant to this subsection may be used only for the purposes of [this act].

(3) A former member is liable for assessments made by the fund for 3 years following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the division. A former member's assessment must be based on the 12-month period immediately preceding the member's termination of its status as a private self-insurer.

(4) The board shall certify to the division the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment.

Section 9. **Reimbursement for obligations paid and assumed.** (1) The fund shall obtain reimbursement from an insolvent private self-insurer up to the amount of the insolvent private self-insurer's workers' compensation obligations paid and assumed by the fund. This includes reimbursement for reasonable administrative and legal costs.

(2) This right, as subrogee of any claimants in any action to collect against the private self-insurer as the debtor, includes but is not limited to a right to a claim for wages and other necessities of life advanced to any claimants.

(3) The fund may obtain from the security deposit or proceeds of other workers' compensation insurance of an insolvent private self-insurer the amount of the insolvent private self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the fund.

(4) The fund may bring an action against any other insurance carrier and person to recover compensation paid and liability assumed by the fund, including but not limited to:

(a) any excess insurance carrier of the private self-insurer; and

(b) any person whose negligence or breach of any obligation contributed to any underestimation of the private self-insurer's total accrual of liability as reported to the division.

Section 10. **Tax exemption.** The fund is exempt from payment of all fees and taxes levied by this state or by any city, county, or other political subdivision, except taxes levied on real or personal property.

Section 11. **Immunity.** There is no liability on the part of, and no claim for relief of any nature may arise against, any member, the fund, its

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agents or employees, or the board for any action taken by them in the performance of their powers and duties under [this act].

Section 12. **Notification of insolvency by private self-insurer.** As a condition of the privilege to self-insure pursuant to Title 39, chapter 71, part 21, a private self-insurer shall agree in writing to notify the division and the fund within 24 hours of the filing of any bankruptcy or determination of insolvency relating to that private self-insurer.

Section 13. **Audit requirement.** Biannually or within 6 months after the close of any fiscal year in which the fund has assumed the workers' compensation obligations of an insolvent private self-insurer, the fund shall:

(1) contract for an independent certified audit of the financial activities of the fund; and

(2) report on the financial status of the fund to the division and to fund members.

Section 14. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 15. **Codification instruction.** [Sections 1 through 13] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 13].

Section 16. **Effective date.** (1) [Section 14] and [this section] are effective on passage and approval.

(2) [Sections 1 through 13] and [section 15] are effective July 1, 1989.

Approved March 22, 1989.

# CHAPTER NO. 245

[SB 289]

AN ACT AUTHORIZING AN INCREASE IN THE TERM OF A LEASE OF A COUNTY NURSING HOME TO ALLOW A SUFFICIENT TERM TO FINANCE MANDATED HEALTH AND SAFETY IMPROVEMENTS; AMENDING SECTION 7-34-2303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-34-2303, MCA, is amended to read:

**"7-34-2303. Lease of county property for boarding or nursing home.** (1) The board of county commissioners may lease and demise county buildings, equipment, furniture, and fixtures for the purpose of operation of a boarding home or nursing home for aged persons, with full

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power of lessor except as limited *in this part*, upon terms and conditions as the board shall decide upon.

(2) The rentals received under *the* lease or leases *must* be paid into the poor fund of the county.

(3) *(a) Except as provided in subsection (3)(b), the* lease and demise *may not* be made for a longer period than 5 years.

*(b) If a lessee of a nursing home is required to undertake capital improvements by state or federal agencies administering health and safety laws and the undertaking requires financing from sources other than county revenues, the term of the lease and demise may correspond to the term of the financing but may not exceed 15 years.*

(4) *The* board *may* not enter into a contract of lease *unless it has* advertised in a newspaper published in the county at least once a week for 5 weeks that *specified* buildings and equipment are for lease for the purpose of a boarding home or nursing home for aged persons."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

# CHAPTER NO. 246

[SB 294]

AN ACT TO ALLOW THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO REGULATE THE COMMERCIAL TAKING OF AQUATIC FISH FOOD ORGANISMS, INCLUDING CRAYFISH; REPEALING SECTION 87-4-604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the department of fish, wildlife, and parks in [section 1] to regulate the taking, for sale or commercial distribution, of aquatic fish food organisms. Even though the bill provides for approval of permits for this activity on a case-by-case basis, the legislature anticipates that commercial activities for certain aquatic fish food organisms may increase to the extent that there is a need for general rulemaking. It is further anticipated that if this occurs, the department will have gathered sufficient information through the permit system and other monitoring to have sufficient knowledge to adopt appropriate rules to prevent overharvest of these organisms and conflicts with other uses of the waters.

[Section 2] allows the department by rule to set reasonable fees for permits and for the use of traps, nets, or seines in the taking of aquatic fish

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food organisms for commercial purposes. It is intended that any fees should not exceed an amount necessary to meet administrative and monitoring costs of the department.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Regulation of commercial taking of aquatic fish food organisms — permit — rulemaking authority.** (1) The department shall regulate the taking, for sale or commercial distribution, of crayfish, mysis shrimp, and other aquatic organisms that provide a food source for fish.

(2) It is unlawful for a person to take aquatic fish food organisms for commercial purposes without obtaining a permit from the department. A permit applicant shall provide the department with sufficient details of the proposed operation to take any aquatic fish food organism for sale or commercial distribution to enable the department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the waters.

(3) The department may:

(a) deny a permit if it determines that there is substantial potential that the proposed operation may harm a fishery or conflict with existing recreational uses of the waters;

(b) condition a permit to restrict the method of taking, the location of the taking, and the quality and quantity of harvest, to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

(c) require a permittee to submit harvest data to the department.

(4) A permit may be revoked for a violation of the conditions of the permit.

(5) The department may adopt rules for the regulation of commercial taking of aquatic fish food organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements for a particular aquatic fish food organism, in order to prevent overharvest or conflict with fishing and recreational uses of the waters.

Section 2. **Fees for commercial taking of aquatic fish food organisms — use of fees.** (1) To finance the administration and enforcement of the provisions of [section 1], the department may by rule set reasonable fees for:

(a) issuance of the permit required in [section 1]; and

(b) use of traps, nets, or seines in Montana waters for the taking of aquatic fish food organisms.

(2) The department shall deposit any fees collected under the provisions of subsection (1) in the state special revenue fund for use by the department.

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Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 4, part 6, and the provisions of Title 87, chapter 4, part 6, apply to [sections 1 and 2].

Section 4. **Repealer.** Section 87-4-604, MCA, is repealed.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1989.

# CHAPTER NO. 247

[SB 323]

AN ACT TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ASSESS A LATE FEE FOR DELINQUENT LICENSE RENEWALS FOR FOOD ESTABLISHMENTS, HOTELS, MOTELS, TOURIST HOMES, RETIREMENT HOMES, ROOMINGHOUSES, CAMPGROUNDS, TRAILER COURTS, WORK CAMPS, AND YOUTH CAMPS; AMENDING SECTIONS 50-50-205, 50-51-204, AND 50-52-202, MCA; AND PROVIDING A COORDINATION INSTRUCTION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-50-205, MCA, is amended to read:

"**50-50-205. License fee — late fee.** *(1)* For each license issued, the department shall collect a fee of $30. It shall deposit 85% of the fees collected in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108(2) and the balance of the fees in the state general fund.

*(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee [is $25 and] must be deposited in the state general fund.*"

Section 2. Section 50-51-204, MCA, is amended to read:

"**50-51-204. License fee — late fee.** *(1)* There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of $30. The department shall deposit 85% of the fees collected in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108(2) and the balance of the fees in the general fund.

*(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license*

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*and who operates an establishment governed by this part in the next licensing year. The late fee [is $25 and] must be deposited in the state general fund."*

Section 3. Section 50-52-202, MCA, is amended to read:

**"50-52-202. License fee — late fee.** (1) Each application shall be accompanied by a fee of $30.

(2) The department shall deposit 85% of the fees collected in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108(2) and the balance of the fees in the state general fund.

*(3) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee [is $25 and] must be deposited in the state general fund."*

Section 4. **Coordination instruction.** If House Bill No. 343 [LC 1120] is passed and approved and if it amends 50-50-205, 50-51-204, or 50-52-202 to allow the license fee to exceed $50, in each section of [this act] that amends a section amended by House Bill No. 343 [LC 1120], the language in the affected sections of [this act] in brackets is void and is replaced by the following language: "must be an amount equal to one-half of the fee required in subsection (1) or $25, whichever is greater. The late fee".

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 22, 1989.

## CHAPTER NO. 248

[SB 443]

AN ACT ALLOWING THE LOTTERY COMMISSION TO PARTICIPATE WITH OTHER STATES IN LOTTERY GAMES WHETHER OR NOT THE STATE HAS A COMMON BORDER WITH MONTANA; AND AMENDING SECTION 23-5-1007, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-1007, MCA, is amended to read:

**"23-5-1007. Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

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(2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

(3) determine the price of each ticket or chance and the number and size of prizes;

(4) provide for the conduct of drawings of winners of lottery games;

(5) carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

(6) study and may enter into agreements with other lottery states to offer lottery games;

(7) prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

(8) adopt rules necessary to carry out this part."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 22, 1989.

# CHAPTER NO. 249

[SB 27]

AN ACT FOR THE GENERAL REVISION OF THE SECURITIES ACT OF MONTANA; AMENDING SECTIONS 30-10-103, 30-10-104, 30-10-201, 30-10-210, AND 30-10-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-10-103, MCA, is amended to read:

**"30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Commissioner" means securities commissioner of this state.

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(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesman only if he otherwise comes within this definition. "Salesman" does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsections (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(a) a salesman, issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(4) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(5) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of such real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(6) "Commodity Exchange Act" means the federal statute of that name as amended on the effective date of this subsection.

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(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(8) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(9) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents himself as providing the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;

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(iv) a *registered* broker-dealer;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(vii) such other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include an individual registered as a salesman pursuant to 30-10-201.

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(15) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(16) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

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(c) platinum;

(d) palladium;

(e) copper; and

(f) such other items as the commissioner may by rule or order specify.

(17) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(19) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money either in a lump sum or periodically for life or some other specified period.

(20) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(21) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 2. Section 30-10-104, MCA, is amended to read:

**"30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 do not apply to any of the following securities:

(1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any

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agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (13) of this section;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by any bank organized under the laws of the United States or any bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in or a debt of or guaranteed by any federal savings and loan association or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(6) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by such railroad or public utility would be exempt under this subsection;

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

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(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the 3 years immediately preceding the offering date;

(c) neither the issuer nor a significant subsidiary has had a material default during the last 7 years (or the issuer's existence if less than 7 years) in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income (before extraordinary items and the cumulative effect of accounting changes) of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 ½ times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year" as used in this subsection (7)(d), means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, such securities have voting rights and such rights include the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, such securities are owned beneficially or of record on any date within 6 months prior to the commencement of the offering by at least 1,200 persons and on such date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within such 20-day period;

(9) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction and which evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited or any guarantee of such paper or of any such renewal, when such commercial paper is sold to banks or insurance companies;

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(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection."

Section 3. Section 30-10-201, MCA, is amended to read:

**"30-10-201. Registration of broker-dealers, salesmen, investment advisers, and investment adviser representatives.** (1) It is unlawful for *a* person to transact business in this state as a broker-dealer or salesman, except *as provided in* 30-10-105, unless he is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesman to represent him in this state, except in transactions exempt under 30-10-105, unless the salesman is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter;

(c) his only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

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(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than $1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner; or

(d) he has no place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not he or any of the persons to whom the communications are directed are then present in this state.

(4) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. A salesman acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. No registration application of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn before the commissioner approves or denies such registration, without the express written consent of the commissioner.

(6) When the registration requirements are met, the commissioner shall make the registration effective. No effective registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be withdrawn *or terminated* without the express written consent of the commissioner.

(7) *Except as provided in subsection (6), registration* of a broker-dealer, salesman, investment adviser, or investment adviser representative:

*(a) is* effective until December 31 following such registration or such other time as the commissioner may by rule adopt; and

*(b)* may be renewed.

(8) The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection

with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(9) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser registered under this act and specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner.

(10) Registration of a broker-dealer, salesman, investment adviser, or investment adviser representative may be renewed by filing, prior to the expiration thereof, an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, investment adviser, or investment adviser representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(11) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(12) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, investment adviser, or investment adviser representative if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, *person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser*:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

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(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected; or

(k) has failed to reasonably supervise his salesmen or employees, if he is a broker-dealer, or his investment adviser representatives or employees, if he is an investment adviser, to assure their compliance with this act.

(13) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

(14) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(15) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman or investment adviser representative, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for

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hearing, may modify or vacate the order or extend it until final determination.

(16) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, *salesman,* investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(17) The commissioner may, after suspending or revoking registration of any broker-dealer, salesman, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon such broker-dealer, salesman, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesman, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such broker-dealer, salesman, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, salesman, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter."

Section 4. Section 30-10-210, MCA, is amended to read:

**"30-10-210. Examination costs.** (1) *An* issuer, broker-dealer, *or investment adviser* who is examined in connection with a registration under parts 1 through 3 of this chapter shall reimburse the commissioner or any of his duly authorized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization; however, no reimbursement of expenses may be required for routine examinations performed in connection with an application for registration. No person *may* pay and no examiner *may* accept additional emolument on account of such *an* examination.

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder. The commissioner may give written authorization for payment of the examination costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If *an* issuer, broker-dealer, *or investment adviser* fails to pay the charges and expenses referred to above, the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid *is* a first lien upon all of the assets and property in this state of *the* issuer, broker-dealer, *or investment adviser* and

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may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of *the* issuer, broker-dealer, *or investment adviser* to pay *the* charges and expenses also *works* a forfeiture of his or its right to do business in this state under parts 1 through 3 of this chapter."

Section 5. Section 30-10-305, MCA, is amended to read:

**"30-10-305. Injunctions and other remedies — limitations on actions.** (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order hereunder, he may in his discretion:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that remains in effect until 10 days after the hearing on the allegations contained in the cease and desist order is held or that becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order hereunder. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, he is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for such violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against him under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of such person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of his right to do business in this state under parts 1 through 3 of this chapter.

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(4) (a) *An* administrative or civil action may *not* be maintained by the commissioner under this section to enforce a liability founded on a violation of 30-10-201*(1)* through *30-10-201(3) or 30-10-202* unless it is brought within 2 years after the violation occurs.

(b) *An* administrative or civil action may *not* be maintained by the commissioner under this section to enforce a liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued thereunder, except 30-10-201*(1)* through *30-10-201(3) and 30-10-202*, unless it is brought within 2 years after discovery by the commissioner or his staff of the facts constituting the violation.

(c) In no event may an action be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued thereunder unless it is brought within 5 years after the transaction on which the action is based."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved March 23, 1989.

# CHAPTER NO. 250

[SB 131]

AN ACT IMPLEMENTING ARTICLE XIII, SECTION 6, OF THE MONTANA CONSTITUTION BY ADOPTING THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES; AND REPEALING SECTIONS 70-1-406 THROUGH 70-1-418, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Uniform Statutory Rule Against Perpetuities".

Section 2. **Statutory rule against perpetuities.** (1) A nonvested property interest is invalid unless:

(a) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(b) the interest either vests or terminates within 90 years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

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(b) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(b) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

Section 3. **When nonvested property interest or power of appointment created.** (1) Except as provided in [Section 5] and subsections (2) and (3) of this section, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of [this act], if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in [section 2(2) or (3)], the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of [this act], a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

Section 4. **Reformation.** Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the 90 years allowed by [section 2(1)(b), (2)(b), or (3)(b)] if:

(1) a nonvested property interest or a power of appointment becomes invalid under [section 2];

(2) a class gift is not but might become invalid under [section 2] and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) a nonvested property interest that is not validated by [section 2 (1)(a)] can vest but not within 90 years after its creation.

Section 5. **Exclusions from statutory rule against perpetuities.** [Section 2] does not apply to:

(1) a nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a:

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(a) premarital or postmarital agreement;

(b) separation or divorce settlement;

(c) spouse's election;

(d) similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(e) contract to make or not to revoke a will or trust;

(f) contract to exercise or not to exercise a power of appointment;

(g) transfer in satisfaction of a duty of support; or

(h) reciprocal transfer;

(2) a fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) the power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

(6) a nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees or independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

(7) a property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

Section 6. **Prospective application.** (1) Except as extended by subsection (2), [this act] applies to a nonvested property interest or a power of appointment created on or after [the effective date of this act]. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before [the effective date of this act] and is determined in a judicial proceeding commenced on or after [the effective date of this act] to violate

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this state's rule against perpetuities as that rule existed before [the effective date of this act], a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and that is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

Section 7. **Uniformity of application and construction.** [This act] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [this act] among the states enacting it.

Section 8. **Repealer.** Sections 70-1-406 through 70-1-418, MCA, are repealed.

Approved March 23, 1989.

# CHAPTER NO. 251

[SB 159]

AN ACT TO GENERALLY REVISE THE NEW HORIZONS ACT; REMOVING THE TIME REFERENCE FOR THE EVALUATION AND PROVISION OF SERVICES; REQUIRING THE ALLOCATION OF FUNDS FOR INCENTIVE AWARDS AT THE BEGINNING OF EACH FISCAL YEAR; EXPANDING CHILD CARE ASSISTANCE TO PERSONS ENROLLED IN DISPLACED HOMEMAKER PROGRAMS; AMENDING SECTIONS 39-7-603 THROUGH 39-7-606, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-7-603, MCA, is amended to read:

**"39-7-603. Rulemaking authority.** The department shall adopt rules necessary for administering the incentive program provided for in 39-7-604 and the child care assistance provided for in 39-7-605. The rules must establish methods for:

(1) selecting the operators of the displaced homemaker program who may participate in the incentive program described in 39-7-604;

(2) selecting the displaced homemaker programs whose clients may receive child care assistance under 39-7-605;

(3) determining eligibility for child care assistance under 39-7-605;

(4) determining the employment status of *AFDC recipients and* former AFDC recipients as required by 39-7-606;

(5) coordinating the child care assistance program with other programs intended to assist AFDC recipients to obtain and retain employment; and

(6) evaluating the effect of the incentive program and child care assistance on the employment and continued employment of former AFDC recipients."

Section 2. Section 39-7-604, MCA, is amended to read:

**"39-7-604. Incentive program — distribution of funds.** *At the beginning of each fiscal year,* the department shall *distribute funds* to selected operators of the displaced homemaker program *as incentive awards to assist AFDC recipients and former AFDC recipients in obtaining and retaining gainful employment. These funds must be used for program enhancement, staff training, or client services.*"

Section 3. Section 39-7-605, MCA, is amended to read:

**"39-7-605. Child care assistance — eligibility — costs.** (1) *The* department shall provide child care assistance to persons enrolled in selected displaced homemaker programs *for the purpose of helping them:*

*(a) obtain or retain gainful employment; or*

*(b) receive classroom training that will enable them to obtain or retain employment.*

(2) Eligibility for assistance under subsection (1) is limited to persons who have received AFDC *in the past 36 months and who:*

*(a) are employed; or*

*(b) are receiving both AFDC and classroom training.*

(3) Assistance under subsection (1) must be provided on an as-needed basis for no longer than *12* months and may not exceed *$50 per week* per child *during the first 6 months, with the amount of assistance gradually decreasing over the remaining 6-month period.*

(4) Administrative costs paid to subcontractors may not exceed 10% of the money provided for child care assistance and *may* be used for:

*(a) any direct and indirect costs associated with management and supervision of the displaced homemaker program; and*

*(b)* follow-up activities conducted for the program evaluation required by 39-7-606."

Section 4. Section 39-7-606, MCA, is amended to read:

**"39-7-606. Program evaluation.** (1) The department shall evaluate the extent to which the incentive program and the child care assistance described in 39-7-604 and 39-7-605 increase:

(a) the number of AFDC recipients who obtain gainful employment; and

(b) the number of former AFDC recipients who continue to be gainfully employed for at least 6 months.

(2) Program evaluation must include a determination, *at* 6 months from the beginning of employment, of the employment status of each person who:

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*(a) is served under the incentive program provided in* 39-7-604*;* or

*(b)* receives child care assistance under 39-7-605."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective July 1, 1989.

Section 7. **Termination.** [This act] terminates July 1, 1990.

Approved March 23, 1989.

## CHAPTER NO. 252

[SB 195]

AN ACT REMOVING THE REQUIREMENTS THAT THE DEPARTMENT OF REVENUE ESTABLISH A CENTRAL REPORTING SYSTEM FOR IDENTIFICATION OF CORPORATIONS AND THAT THE DEPARTMENT OF LABOR AND INDUSTRY FURNISH A LIST OF CORPORATIONS TO THE DEPARTMENT OF REVENUE; AMENDING SECTION 15-31-603, MCA; AND REPEALING SECTIONS 15-31-601, 15-31-602, AND 15-31-604 THROUGH 15-31-607, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-31-603, MCA, is amended to read:

**"15-31-603. List of corporations furnished by secretary of state.** The secretary of state shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 35, chapter 1, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana; *and*

(4) such other information as the director of the department *of revenue* may require."

Section 2. **Repealer.** Sections 15-31-601, 15-31-602, and 15-31-604 through 15-31-607, MCA, are repealed.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 23, 1989.

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# CHAPTER NO. 253

[SB 210]

AN ACT REVISING THE PENALTY FOR VIOLATION OF THE NEPOTISM LAW; AND AMENDING SECTION 2-2-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-2-304, MCA, is amended to read:

**"2-2-304. Penalty for violation of nepotism law.** Any public officer or employee or any member of any board, bureau, or commission of this state or any political subdivision thereof who shall, by virtue of his office, have the right to make or appoint any person to render services to this state or any subdivision thereof and who shall make or appoint to such services or enter into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to him or them or connected with him or them by consanguinity within the fourth degree or by affinity within the second degree shall thereby be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not less than $50 or more than $1,000 or by imprisonment in the county jail for not *more* than 6 months or by both such fine and imprisonment."

Approved March 23, 1989.

# CHAPTER NO. 254

[SB 218]

AN ACT TO ALLOW THE DIVISION OF WORKERS' COMPENSATION TO WAIVE THE STATUTE OF LIMITATION ON PRESENTMENT OF A CLAIM UPON A SHOWING OF LATENT INJURY OR EQUITABLE ESTOPPEL; AND AMENDING SECTION 39-71-601, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-601, MCA, is amended to read:

**"39-71-601. Statute of limitation on presentment of claim — waiver.** (1) In case of personal injury or death, all claims *must* be forever barred unless presented in writing to the employer, the insurer, or the division, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

(2) The division may waive the time requirement up to an additional 24 months *upon a reasonable showing by the claimant of:*

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*(a) lack of knowledge of disability;*

*(b) latent injury; or*

*(c) equitable estoppel.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 23, 1989.

# CHAPTER NO. 255

[SB 310]

AN ACT REVISING CERTAIN PROVISIONS OF THE MONTANA ELECTRONIC FUNDS TRANSFER ACT; AND AMENDING SECTIONS 32-6-103, 32-6-104, 32-6-303, AND 32-6-305, MCA.

WHEREAS, it is desirable to revise the Montana Electronic Funds Transfer Act to address obligations of merchants and business organizations and to provide for the use of a personal identification number at a point-of-sale terminal as an alternative to obtaining a customer's signature.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-6-103, MCA, is amended to read:

"**32-6-103. Definitions.** As used in this chapter, the following definitions apply unless the context otherwise requires:

(1) "Electronic funds transfer" means debiting or crediting a depositor's account or otherwise transacting any business in a financial institution by electronic impulse messages, authorized under this chapter, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies, or otherwise, and processing the adjustments without regular and customary direct human intervention. Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through normal human intervention.

(2) "Financial institution" means a bank chartered under chapter 1 of this title, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under chapter 2 of this title, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under chapter 3 of this title, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this chapter only, a consumer loan company licensed under chapter 5 *is* considered a financial institution.

(3) (a) "Satellite terminal" means any machine or device located off the premises of a financial institution which a financial institution or its customers may use to carry out electronic funds transfers.

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(b) "Satellite terminal" includes:

(i) automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, activated by a unique identification device and personal identification number;

(ii) point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, provided that the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic funds transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of "satellite terminal" does not include and nothing in this chapter may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal which is utilized by a merchant in the merchant's business only and does not provide access to a financial institution.

(4) "Premises" means those locations where by applicable law financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; the term includes a detached drive-in or walk-up facility approved under 32-1-372.

(5) "Personal identification number" means a combination of numerals or letters selected for a customer of a financial institution, *merchant, or other person* and used, in conjunction with a unique identification device, to initiate a request for an electronic funds transfer.

(6) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(7) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(8) "Department" means the department of commerce.

(9) "Person" means an individual, partnership, corporation, association, or any other business organization.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device containing a number unique to a customer *and issued by* a financial institution, *merchant, or other person.*"

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Section 2. Section 32-6-104, MCA, is amended to read:

**"32-6-104. Consumer information.** (1) A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer an itemized statement clearly setting forth, without limitation:

(a) the specific transactions which may be performed through satellite terminals;

(b) the charges, if any, for individual transactions engaged in through a satellite terminal;

(c) minimum balance requirements, if any;

(d) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes his personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of theft or loss;

(e) the legal status of receipts issued from a satellite terminal;

(f) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(g) the right of the customer to seek correction of any errors he believes have been made in his account by electronic funds transfer;

(h) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(i) the economic significance of having no "float" time and no stop-payment authority.

(2) The customer shall then sign a statement acknowledging his acceptance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, *must* be provided the customer. In addition, the information set forth in subsection (1)(d) *must* be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided.

*(3) A merchant or person other than a financial institution that issues a unique identification device to its customers for use at a point-of-sale terminal and that provides to the holders of the unique identification device a disclosure that satisfies the initial disclosures of terms and conditions under Regulation E of the federal Electronic Fund Transfer Act is considered to be in compliance with the disclosure requirements of this section."*

Section 3. Section 32-6-303, MCA, is amended to read:

**"32-6-303. Unauthorized transactions — liability.** (1) A customer whose account is debited by an electronic funds transfer without his

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authorization is not liable for the amount of such transaction, and the amount *must* be recredited to his account as provided under 32-6-302, unless:

(a) the financial institution has provided the customer a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first $50 of any consequent transactions made prior to the time the financial institution is notified of *the* loss or theft; or

(b) the financial institution has provided the customer a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of *the* theft or loss.

(2) A customer who willingly gives his unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by *the* other person.

(3) A merchant who makes electronic funds transfer services available on his premises is liable for the amount of an unauthorized electronic funds transfer requested from his premises only if:

(a) he or his agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) he fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) he breaches the warranty required by subsection (4).

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution *or the department* that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer *that* does not fall upon a customer or a merchant under this section falls upon the financial institution *that* carries out the transfer."

Section 4. Section 32-6-305, MCA, is amended to read:

**"32-6-305. Point-of-sale terminals — additional standards.** (1) Before the department approves a point-of-sale terminal, it must find that the merchant demonstrates on his application that:

(a) he will use acceptable procedures for customer self-identification;

(b) he will use a draft and receipt system, on which the customer's signature acknowledges receipt of the goods or services paid for by electronic funds transfer. *If the sale is initiated by the customer entering his personal*

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*identification number in the point-of-sale terminal, the merchant is not required to obtain the customer's signature.*

(c) he will institute a procedure whereby he keeps one copy of each draft and receipt for 1 year following the date of transaction, he gives one copy to the customer in satisfaction of 32-6-301(1), and he forwards one copy to the customer's financial institution. The requirement of a copy to the financial institution may be waived by the department by rule if the point-of-sale terminal is activated by a customer's unique identification device.

(2) A financial institution involved in an electronic funds transfer initiated from a point-of-sale terminal may inspect the merchant's copy of the transaction record for any purpose consistent with the privacy provisions of 32-6-105."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 23, 1989.

# CHAPTER NO. 256

[SB 332]

AN ACT RELATING TO COUNTY, MUNICIPAL, IMPROVEMENT DISTRICT, AND SCHOOL DISTRICT BONDS; CHANGING THE DEFINITION OF SERIAL BONDS AND ESTABLISHING WHEN THE TERM OF A BOND COMMENCES; AMENDING SECTIONS 7-7-2206, 7-7-2211, 7-7-4205, 7-7-4210, 7-12-2171, 7-12-4203, 20-9-408, AND 20-9-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-7-2206, MCA, is amended to read:

**"7-7-2206. Term of general obligation bonds.** (1) *Bonds* issued for any of the purposes designated in 7-7-2201(1) through (4) *may not* be for a longer term than 20 years.

(2) *Bonds* issued for any of the purposes designated in 7-7-2201(5) and (6) *may not* be for a longer term than 10 years.

(3) Bonds issued for any of the purposes designated in 7-7-2202 *may* not be for a longer term than will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term *may* not exceed 20 years.

(4) The length of the term required *must* be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within *the*

county as ascertained from the last completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county *shall* from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

*(5) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies taxes to pay principal and interest on the bonds.*"

Section 2. Section 7-7-2211, MCA, is amended to read:

"**7-7-2211. Serial bonds.** The term "serial bonds", as used in this part, *means* a bond issue payable in annual installments *commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with* the principal amount of bonds maturing in each installment not *exceeding* three times the principal amount of the bonds maturing in the immediately preceding installment."

Section 3. Section 7-7-4205, MCA, is amended to read:

"**7-7-4205. Term of general obligation bonds.** *(1) Bonds* for any purpose *may not* be issued for a longer term than 20 years.

*(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies taxes to pay principal and interest on the bonds.*"

Section 4. Section 7-7-4210, MCA, is amended to read:

"**7-7-4210. Serial bonds.** The term "serial bonds", as used in this part, *means* a bond issue payable in annual installments *commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with* the principal amount of bonds maturing in each installment not *exceeding* three times the principal amount of the bonds maturing in the immediately preceding installment."

Section 5. Section 7-12-2171, MCA, is amended to read:

"**7-12-2171. Details relating to rural improvement district bonds and warrants — definitions of bond forms.** (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district (that is, either the construction or maintenance fund, as the case may be) and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually or semiannually, at the discretion of the board of county commissioners, on dates the board prescribes. *The* warrants or bonds shall bear the signatures of the chairman of the board and the county clerk and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and if interest coupons *are* attached *to the warrants or bonds*, they shall also be registered and shall bear the signatures of the chairman of the board and the county clerk. *The* coupons may bear the facsimile signatures of *the* officers in the discretion of the board.

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(2) *The* bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 30 years; except that if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years. *For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the county first levies to pay principal and interest on the bonds.*

(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the board, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest.

(4) As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds on which:

(i) a part of the principal must be paid each time interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if *the* increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means *a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding* three times the principal amount of *the* bonds maturing in *the immediately preceding installment.*"

Section 6. Section 7-12-4203, MCA, is amended to read:

"**7-12-4203. Details relating to special improvement district bonds and warrants — definitions of bond forms.** (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually or semiannually, at the discretion of the governing body of the municipality, on dates the governing body prescribes. *The* warrants or bonds shall bear the signatures of the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons *are* attached *to the warrants or bonds*, they shall also be registered and shall bear the signatures of the mayor and clerk.

(2) *The* bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period

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not to exceed 20 years. *For the purposes of this subsection, the term of a bond issue commences on July 1 of the fiscal year in which the city first levies assessments to pay principal and interest on the bonds.*

(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the city council, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest.

(4) As used in part 41 and this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds on which:

(i) a part of the principal must be paid each time interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if *the* increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means *a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding* three times the principal amount of *the* bonds maturing in *the immediately preceding installment.*"

Section 7. Section 20-9-408, MCA, is amended to read:

**"20-9-408. Definition of forms of bonds.** As used in this title, unless the context clearly indicates otherwise:

(1) "amortization bonds" means the form of bonds on which a part of the principal must be paid each time interest becomes payable. The part payment of principal increases at each installment in the same amount that the interest decreases. The combined interest and principal due on each due date remains the same until the bonds are paid. The final payment may vary from prior payments in the amount resulting from disregarding fractional cents in prior payments.

(2) "serial bonds" means *a bond issue payable in annual installments commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing in each installment not exceeding* three times the principal amount of the bonds maturing in the immediately preceding *installment.*"

Section 8. Section 20-9-410, MCA, is amended to read:

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"**20-9-410. Limitation of term and interest — timing for redemption.** *(1)* School district bonds *may* not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds *may* not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for *the* unexpired term. All bonds issued for a longer term than 5 years *must* be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and it *must* be so stated on the face of the bonds. The interest *must* be as provided under 17-5-102 and *must* be payable semiannually.

*(2) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the school district first levies taxes to pay the principal and interest on the bonds.*"

Section 9. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved March 23, 1989.

# CHAPTER NO. 257

[SB 370]

AN ACT TO ALLOW A COUNTY GOVERNING BODY TO RESTORE ALL OR PART OF THE ANNUAL COST-OF-LIVING INCREASES OF COUNTY OFFICERS AND THE LONGEVITY INCREASES OF DEPUTY COUNTY ATTORNEYS, UNDERSHERIFFS, AND DEPUTY SHERIFFS THAT WERE LOST AS A RESULT OF COUNTY WAGE FREEZES; AMENDING SECTIONS 7-4-2503 AND 7-4-2504, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2503, MCA, is amended to read:

"**7-4-2503. Salary schedule for certain county officers.** (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1980 federal decennial census; or

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(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(3) (a) In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981, shall be $36,500. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be $36,500.

(c) Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. *Unless restored pursuant to 7-4-2504(2), any* cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of his employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on

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the anniversary date of his employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, *unless longevity increases are restored pursuant to 7-4-2504(2), the* years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 2. Section 7-4-2504, MCA, is amended to read:

**"7-4-2504. Salaries to be fixed by resolution — cost-of-living increments.** (1) The county governing body shall by resolution, on or before July 1, 1982, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if he receives a salary) for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, county attorney, and coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such case the cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

*(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for deputy county attorneys in 7-4-2503(3)(d)(i)*

*and for undersheriffs and deputy sheriffs in 7-4-2510 must also be restored for the years for which the cost-of-living increment was restored.*

*(3)* If the application of 7-4-2503 does not qualify a county official for a salary increase of at least 7% on July 1, 1981, his salary on that date shall be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year.

*(4)* The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect upon the first day of each ensuing fiscal year."

Section 3. **Effective date.** [This act] is effective June 30, 1989.

Approved March 23, 1989.

# CHAPTER NO. 258

[SB 417]

AN ACT MAKING IT AN OFFENSE TO INJURE A POLICE DOG; AND AMENDING SECTION 45-8-209, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-8-209, MCA, is amended to read:

**"45-8-209. Harming a police dog — penalty.** (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots, kills, *or otherwise injures* a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) As used in this section, the following definitions apply:

(a) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-201.

(b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in 7-32-201, in the exercise of its authority;

(ii) specifically trained for law enforcement work; and

(iii) under the control of a law enforcement officer."

Approved March 23, 1989.

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# CHAPTER NO. 259

[SB 438]

AN ACT ALLOWING A CORPORATION OR PARTNERSHIP TO ACT AS A REAL ESTATE LICENSEE IF EVERY MEMBER OF THE CORPORATION OR PARTNERSHIP IS LICENSED; AND AMENDING SECTION 37-51-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-51-301, MCA, is amended to read:

**"37-51-301. License required — limited to persons.** (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a *licensee* if every corporate officer and every partner performing the functions of a *licensee* is licensed *under this chapter.* All officers of a corporation or all members of a partnership acting as a *licensee* are in violation of this chapter unless there is full compliance with this subsection."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 23, 1989.

# CHAPTER NO. 260

[HB 68]

AN ACT TO LIMIT GOVERNMENTAL AUDIT CONTRACTS TO 3 YEARS WITH AN OPTION TO EXTEND THE CONTRACT AN ADDITIONAL 2 YEARS; AND AMENDING SECTION 2-7-506, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-7-506, MCA, is amended to read:

**"2-7-506. Audit by independent accountant or auditor.** (1) In lieu of the audits required of the department, the department may, with the consent of or at the request of the respective governmental entities, contract out such audits with a public accountant or firm of public accountants who are licensed under the laws of Montana. *The duration of such an audit contract must be set forth in the contract and may not exceed 3 years but*

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*the contract may be extended an additional 2 years upon the request of the governmental entity.*

(2) The department shall establish rules governing the administration of the contracts between the department, the independent accountant/auditor, and the governmental entities. These rules shall include but not be limited to:

(a) establishment of criteria for the selection of the independent accountant/auditor;

(b) contract form and content; and

(c) standards of audit and reporting."

Approved March 23, 1989.

# CHAPTER NO. 261

[HB 77]

AN ACT ALLOWING LOCAL NONPROFIT CORPORATIONS TO MANAGE HISTORIC PROPERTIES OWNED BY THE STATE OF MONTANA; ALLOWING THE MONTANA HISTORICAL SOCIETY TO CONTRACT FOR MANAGEMENT OF SUCH PROPERTIES; AND PROVIDING FOR DONATIONS AND DISPOSITION OF INCOME.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Local Management of Historic Sites and Buildings Act".

Section 2. **Purpose.** The purposes of [this act] are to:

(1) encourage the restoration, preservation, and maintenance of historic sites and buildings owned by the state of Montana;

(2) encourage the participation of Montana citizens and groups in the local management, on a nonprofit basis, of historic sites and buildings through the donation of time, materials, and resources toward the restoration and preservation of these properties;

(3) remove unnecessary barriers to the efficient and cost-effective management of historic sites and buildings by qualified and responsible local nonprofit corporations as contracted managers; and

(4) retain state ownership of historic sites and buildings and state control over decisions concerning their historic integrity and preservation so that the citizens of the state may realize the greatest benefits available from each property.

Section 3. **Management of historic sites and buildings — contracts.** (1) The Montana historical society may accept gifts, grants,

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bequests, or contributions of money, property, labor, or materials for use in the operation, maintenance, repair, preservation, or renovation of any historic site or building owned by the state of Montana.

(2) The Montana historical society may contract with a local nonprofit corporation for the operation, maintenance, preservation, repair, or renovation of any historic site or building owned by the state. The nonprofit corporation may not be considered a public agency for purposes of Title 18, except for the provisions in chapter 2, part 2, or for the purposes of other statutes applicable to the historical society if 25% of the total annual expenses for all costs of operation, maintenance, repair, preservation, and renovation of the historic site or building is provided by in-kind or donated labor or materials by or on behalf of the contracting local nonprofit corporation. The nonprofit corporation must conform to the provisions of Title 18, chapter 2, part 2, and Title 35, chapter 2.

(3) No contract may be entered into nor any other obligation incurred for the purposes in subsection (1) until money has been appropriated by the legislature or is otherwise available. If funds are otherwise available, Title 18, chapter 2, parts 1, 3, and 4 are not applicable.

(4) The Montana historical society may require a corporation managing a property pursuant to subsection (3) to deposit in a local financial institution all profits, revenues, royalties, or fees received or all gifts, grants, bequests, or other contributions collected by the corporation for the benefit of the property. All funds must be accounted for pursuant to the management contract and audited quarterly by the society or its designee, and expenditures of the funds may be used only for the operation, maintenance, preservation, repair, renovation, and management of the property.

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 22, chapter 3, and the provisions of Title 22, chapter 3, apply to [sections 1 through 3].

Approved March 23, 1989.

# CHAPTER NO. 262

[HB 177]

AN ACT CREATING A PANEL TO REVIEW CHIROPRACTOR MALPRACTICE CLAIMS PRIOR TO A COURT ACTION; APPROPRIATING FUNDS FOR ADMINISTRATION OF THE ACT; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 37] may be cited as the "Montana Chiropractic Legal Panel Act".

Section 2. **Purpose.** The purpose of [sections 1 through 37] is to:

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(1) prevent, whenever possible, filed court actions against chiropractic physicians and their employees for professional liability in situations in which the facts do not permit at least a reasonable inference of malpractice; and

(2) make possible the fair and equitable disposition of such claims against chiropractic physicians as are or reasonably may be well founded.

Section 3. **Definitions.** As used in [sections 1 through 37], the following definitions apply:

(1) "Chiropractic physician" means:

(a) for purposes of the annual assessment under [section 12], a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the assessment:

(i) has his principal residence or place of chiropractic practice in the state of Montana;

(ii) is not employed full time by any federal agency or entity; and

(iii) is not fully retired from the practice of chiropractic; or

(b) for all other purposes, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the occurrence of the incident giving rise to a malpractice claim:

(i) had his principal residence or place of chiropractic practice in the state of Montana and was not employed full time by any federal agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of a state to render chiropractic services and each of whose shareholders, partners, or owners were chiropractic physicians licensed to practice chiropractic under Title 37, chapter 12.

(2) "Director" means the director of the Montana chiropractic legal panel.

(3) "Malpractice claim" means any claim or potential claim against a chiropractic physician for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health care that proximately results in damage to the claimant, and includes but is not limited to a tort or contract claim or potential claim.

(4) "Panel" means the Montana chiropractic legal panel created in [section 4].

Section 4. **Creation of panel.** There is a Montana chiropractic legal panel. The panel is a state agency allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

Section 5. **What claims panel to review.** The panel shall review all malpractice claims or potential claims against chiropractic physicians covered by [sections 1 through 37], except claims subject to a valid arbitration agreement allowed by law.

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Section 6. **Immunity of panel members and witnesses from civil liability.** Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by [sections 1 through 37].

Section 7. **Appointment, term, and salary of director.** The executive director of the Montana chiropractic association shall appoint the director of the panel, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of and the director's salary must be set by the executive director of the Montana chiropractic association, subject to the approval of the chief justice.

Section 8. **Employment of staff and maintenance of offices.** (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted.

Section 9. **Compensation of panel members and staff.** (1) Each member of the panel must be paid a salary of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) Each member of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 2-18-501 through 2-18-503. The director shall approve such expenses before payment is made.

Section 10. **Authority to adopt rules.** The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the panel. Rules may not be adopted that require a party to make a monetary payment as a condition of bringing a malpractice claim before the chiropractic review panel.

Section 11. **Powers of panel.** The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by rules adopted by the director, the issuance of subpoenas, and the performance of all other acts required to fairly and effectively administer [sections 1 through 37].

Section 12. **Funding.** (1) There is an account in the state special revenue fund. Money from the assessments levied under this section must be deposited in the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the director to be used to administer [sections 1 through 37].

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year, not required for the administration of [sections 1 through 37], must be retained by the director and used to finance the administration of [sections 1 through 37] during the next fiscal year, in which event the director shall reduce the next

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annual assessment to an amount estimated to be necessary for the proper administration of [sections 1 through 37] during that fiscal year.

(3) The annual assessment must be paid on or before the date the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of commerce has under 37-12-307 with a chiropractic physician's annual license fee.

Section 13. **Panel audits.** (1) The panel and fund must be audited by or at the direction of the legislative auditor and in accordance with 5-13-304 and 5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual assessment.

(2) A copy of each audit report must be furnished to the supreme court.

(3) The cost of an audit must be paid by the panel.

Section 14. **How cases submitted.** A claimant shall submit a case for the consideration of the panel before filing a complaint in a court sitting in Montana by addressing an application in writing, signed by the claimant or his attorney, to the director of the panel.

Section 15. **Content of application — waiver of confidentiality of medical records.** The application must contain a statement:

(1) in reasonable detail of the elements of the chiropractic physician's conduct that are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all witnesses, chiropractic and other physicians, and hospitals having contact with the claimant; and

(2) authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of the panel's consideration of the claim, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be construed as waiving any privilege for any other purpose or in any other context, in or out of court.

Section 16. **Amendments to application.** Amendments to an application may be made in the manner authorized by rule.

Section 17. **Copies of application to professional societies when vicarious liability claimed.** If an application employs a theory of respondeat superior or any other derivative theory of recovery, the director shall give a copy of the application to the state professional society, association, or licensing board of both the individual chiropractic physician whose alleged malpractice caused the application to be filed and the chiropractic physician named a defendant as employer, master, or principal.

Section 18. **Service on health care provider.** Upon receipt of an application, the director or his delegate shall serve a copy of the application

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on the chiropractic physician whose alleged malpractice caused the application to be filed. Service must be by mailing a certified copy of the application to the chiropractic physician at his last-known address, postage prepaid, by certified mail, return receipt requested.

Section 19. **Chiropractic physician's appearance and answer — waiver of confidentiality of records.** (1) If a chiropractic physician whose alleged malpractice caused the application to be filed chooses to retain legal counsel, his attorney must informally enter an appearance with the director.

(2) The chiropractic physician shall answer the application and submit a statement authorizing the panel to inspect all medical and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the content of those records. Nothing in the statement waives any privilege for any other purpose.

Section 20. **Assistance to claimant in obtaining expert consultation.** The director shall cooperate fully with the claimant in retaining as an expert consultant a chiropractic physician qualified in the field of chiropractic.

Section 21. **Director to furnish panel members with documents.** At least 10 days prior to the hearing, the director shall give each panel member copies of all claims, briefs, medical or hospital records, and other documents the director considers necessary.

Section 22. **Composition of panel.** Those eligible to sit on the panel are chiropractic physicians licensed under Montana law and residing in Montana and attorneys who are members of the state bar of Montana. Three panel members who are chiropractic physicians and three panel members who are attorneys shall sit in review of each case.

Section 23. **Selection of panelists.** (1) The director shall promptly transmit an application submitted under [section 14] to the directors of the chiropractic physician's state professional society or association and the state bar of Montana. Within 14 days from the date of transmittal of the application, the director of the professional society or association and the state bar of Montana shall each select 12 proposed panelists from which the director shall select three from each list to serve on the panel. The director shall notify the parties of the names of the panelists.

(2) If no state professional society or association exists or if the chiropractic physician does not belong to such a society or association, the director shall transmit the application to the chiropractic physician's state licensing board and the licensing board shall select 12 proposed panelists from the chiropractic physician's profession and, when applicable, from persons specializing in the same field or discipline as the chiropractic physician.

Section 24. **Panel in cases involving multiple defendants.** If there are multiple defendants, the case against each may be reviewed by a separate panel or, at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all defendants.

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Section 25. **Disqualification of panel member.** (1) A panel member or proposed member shall disqualify himself from consideration of a case in which, by virtue of his circumstances he believes his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a panel member or proposed member from serving.

(2) If a party files an affidavit stating that he believes a panel member cannot impartially sit in review of the application, that panel member is disqualified from consideration of the case. The affidavit must be filed within 15 days of the transmittal by the director, under [section 23], of the names of the panel members selected. A party may not disqualify more than three panel members. The entity that chose the disqualified member shall select another panel member.

Section 26. **Time and place of hearing.** (1) Subject to subsection (2), the director shall choose a date, time, and place for hearing and give prompt notice thereof to the parties involved, their attorneys, and the members of the panel. The hearing date may not be more than 120 days after transmittal of the application by the director, unless the panel finds that good cause exists for extending the 120-day period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall, upon request of the director of the panel, provide suitable facilities for the hearing.

Section 27. **Conduct of hearing.** (1) At the time set for hearing, the claimant must be present and give a brief statement of his case, including the facts constituting the alleged professional malpractice that he is prepared to prove. The chiropractic physician against whom the claim is brought and his attorney may be present and may make an introductory statement of his case.

(2) A party may call witnesses to testify before the panel. Witnesses must be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by a party may be offered and admitted if relevant. Written statements of facts by treating chiropractic physicians may be reviewed.

(3) The hearing is informal, and an official transcript must not be made.

Section 28. **Conclusion of hearing — supplemental hearing.** (1) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing. The supplemental hearing must be held at a date and time no more than 30 days from the date of the original hearing, unless the claimant or his attorney consents in writing to a longer period.

(2) A supplemental hearing must be held in the same manner as the original hearing, and the parties and their attorneys may be present.

Section 29. **Selection of chairman.** At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman, who must be an attorney.

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Section 30. **Questions panel must decide.** Upon consideration of all relevant evidence, the panel shall decide whether there is:

(1) substantial evidence that the acts complained of occurred and that they constitute malpractice; and

(2) a reasonable medical probability that the patient was injured thereby.

Section 31. **Deliberations to be secret — voting.** The deliberations of the panel are confidential. Each vote of the panel on a question for discussion must be by secret ballot. The decision must be by a majority vote of those voting members of the panel who sat during the case.

Section 32. **Form and content of decision.** (1) The decision must:

(a) be in writing and signed by the chairman;

(b) contain only the conclusions reached by a majority of the panel; and

(c) list the number of dissenting members, if any.

(2) The majority may briefly explain the reasoning and the basis for its decision, and the dissenters may likewise explain the reasons for disagreement.

Section 33. **Decision to be filed and copies sent to parties, attorneys, and licensing board.** A copy of the decision must be:

(1) given to the parties and their attorneys;

(2) retained in the permanent files of the panel; and

(3) given to the chiropractic physician's professional licensing board.

Section 34. **Decision not binding — settlement agreements.** The panel's decision is without administrative or judicial authority and is not binding upon a party. The panel may recommend an award or approve a settlement agreement. An approved settlement agreement is binding on the parties.

Section 35. **Tolling of statute of limitations.** (1) Upon receipt of an application by the director, the running of an applicable limitation period in a malpractice claim is tolled as to each chiropractic physician named as a party and as to each other person or entity named as a necessary or proper party for a court action that might subsequently arise out of the factual circumstances set forth in the application.

(2) The running of the applicable limitation period in a malpractice claim does not begin again until:

(a) 30 days after an order of dismissal, with or without prejudice against refiling, is issued; or

(b) after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant or his attorney.

Section 36. **Records of proceedings — confidentiality.** The director shall maintain records of all proceedings before the panel. The record

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must include the nature of the act or omission complained of, a brief summary of the evidence, the decision of the panel, and any majority or dissenting opinions filed. Records that identify a party to the proceedings may not be made public, are not subject to subpoena, and may be used only to compile statistical data and facilitate studies of medical malpractice in Montana.

Section 37. **Panel proceedings and decision privileged from disclosure in court actions.** (1) A panel member must not be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) A decision of the panel is not admissible as evidence in an action subsequently brought in a court of law.

Section 38. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; *[section 12];* 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June**

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**30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 39. **Effective date — applicability.** (1) [This act] is effective January 1, 1990.

(2) [This act] applies to causes of action arising on or after January 1, 1990.

Approved March 23, 1989.

# CHAPTER NO. 263

[HB 206]

AN ACT TO PROVIDE FOR MANDATORY SUSPENSION OF A DRIVER'S LICENSE FOR FAILURE TO APPEAR OR PAY A FINE FOR A VIOLATION OF THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAWS; AND AMENDING SECTION 61-5-214, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-5-214, MCA, is amended to read:

**"61-5-214. Mandatory suspension for failure to appear or pay fine.** The department shall suspend the license or driving privilege of an operator immediately upon receipt of a certified copy of a docket page or other sufficient evidence from the court that the operator:

(1) is *charged with* a violation of 61-5-302 through 61-5-306, 61-5-309, or chapters 3, *6,* 7, 8, 9, or 10 of this title or is guilty of a criminal offense and was driving or was in actual physical control of a motor vehicle when the offense occurred; and

(2) (a) failed to post the set bond amount or appear as ordered by the court or appear upon issued summons; or

(b) failed to forfeit the posted bond amount or, when assessed a fine, costs, or restitution of $100 or more, failed to pay *the* fine, costs, or restitution; and

(3) received notice, evidenced by a signed receipt for a certified letter or by a statement signed before the court of the provisions of this section, including the reinstatement fee."

Approved March 23, 1989.

# CHAPTER NO. 264

[HB 228]

AN ACT AUTHORIZING SCHOOL DISTRICTS TO ISSUE AND SELL SHORT-TERM OBLIGATIONS TO THE BOARD OF INVESTMENTS; ESTABLISHING TERMS AND CONDITIONS FOR THE ISSUANCE OF THE OBLIGATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Issuance of short-term obligations — authorization — conditions.** (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments short-term obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, and electrical systems;

(c) any other capital expenditure the district is otherwise authorized to make, subject to subsection (4); and

(d) the costs associated with the issuance and sale of the short-term obligations.

(2) The term of the short-term obligation may not exceed 5 full fiscal years.

(3) At the time of issuing the obligation, there must exist an amount in the budget for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of such principal and interest.

(4) The proceeds of the short-term obligation may not be used to acquire real property or construct a facility.

(5) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(6) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount or with a premium, and upon any other terms and conditions that the trustees determine to be in the best interests of the district.

(7) The principal amount of the short-term obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.

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Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, part 4, and the provisions of Title 20 apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 23, 1989.

# CHAPTER NO. 265

[HB 225]

AN ACT ASSURING DENTAL PATIENTS FREEDOM TO CHOOSE A DENTIST WHEN RECEIVING DENTAL BENEFITS THROUGH PREFERRED PROVIDER HEALTH INSURANCE OR HEALTH MAINTENANCE PLANS; AMENDING SECTION 33-22-1706, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-22-1706, MCA, is amended to read:

**"33-22-1706. Permissible provisions in provider agreements, insurance policies, and subscriber contracts.** (1) A provider agreement, insurance policy, or subscriber contract issued or delivered in this state may contain certain other components designed to control the cost and improve the quality of health care for insureds and subscribers, including:

(a) a provision setting a payment difference for reimbursement of a nonpreferred provider as compared to a preferred provider. If the health benefit plan contains a payment difference provision, the payment difference may not exceed 25% of the reimbursement level at which a preferred provider would be reimbursed. The commissioner shall review differences between copayments, deductibles, and other cost-sharing arrangements.

(b) conditions, not inconsistent with other provisions of this part, designed to give policyholders or subscribers an incentive to choose a particular provider.

(2) All terms or conditions of an insurance policy or subscriber contract, except those already approved by the commissioner, are subject to the prior approval of the commissioner.

*(3) A plan offering prepaid dental services under this part must offer its insureds the right to obtain dental care from any licensed dental care provider of their choice subject to the same terms and conditions imposed under subsection (1).*"

Section 2. **Dentist participation as provider.** A contract for dental care services through a health maintenance organization that is offered, delivered, or renewed under this chapter must allow a dentist to request

participation as a provider on the same terms and conditions as those by which other dentists participate. This opportunity for participation must be offered for each contract or plan. Each contract or plan must provide at least one annual period during which a dentist may exercise this right.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Applicability.** [This act] applies to contracts entered into or renewed after October 1, 1989.

Section 5. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 33, chapter 31, and the provisions of Title 33, chapter 31, apply to [section 2].

Approved March 23, 1989.

# CHAPTER NO. 266

[HB 242]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO PUBLIC ASSISTANCE; TO EXTEND THE PERIOD OF TIME IN WHICH TRANSFER OF PROPERTY MAY RESULT IN DISQUALIFICATION FOR PUBLIC ASSISTANCE; TO ELIMINATE THE REQUIREMENT THAT COUNTY WELFARE DEPARTMENTS PROVIDE NOTICE TO LAW ENFORCEMENT OFFICIALS CONCERNING THE PROVISION OF AFDC TO A CHILD WHO HAS BEEN DESERTED OR ABANDONED BY A PARENT; TO CLARIFY REQUIREMENTS FOR COUNTY REIMBURSEMENTS TO THE STATE FOR AFDC PROVIDED TO HOUSEHOLDS THAT INCLUDE AN ENROLLED INDIAN; AMENDING SECTIONS 53-2-101, 53-2-601, 53-2-610, 53-4-201, 53-4-233, 53-4-241, AND 53-4-242, MCA; REPEALING SECTION 53-4-223, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-2-101, MCA, is amended to read:

**"53-2-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(2) "Protective services" means services to children and adults to be provided by the department of family services as permitted by Titles 41 and 53.

(3) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

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(4) "Needy person" is one who is eligible for public assistance under the laws of this state."

Section 2. Section 53-2-601, MCA, is amended to read:

**"53-2-601. Disqualification from public assistance when property transferred for purpose of qualifying for public assistance.** The department may deny public assistance to any person who has divested himself directly or indirectly of any property for the purpose of qualifying for public assistance. The department shall make rules that raise a rebuttable presumption that any transfer of property within *30 months* of the date of application for *general relief* was for the purpose of qualifying for *such* assistance. *The department may also make rules consistent with federal law raising a similar rebuttable presumption for purposes of state-administered federal public assistance programs authorized under Title 53.*"

Section 3. Section 53-2-610, MCA, is amended to read:

**"53-2-610. County to reimburse department.** (1) On or before the 20th of each month, the department of social and rehabilitation services shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department of social and rehabilitation services within 20 days after the claim is presented.

(2) The counties *may* not be required to reimburse the department of social and rehabilitation services for:

*(a)* any portion of *public* assistance paid to *a household eligible for aid to families with dependent children if the household includes an enrolled Indian who is the caretaker relative of a needy dependent child;* or

*(b)* any payment on behalf of any person in a state-operated medical institution.

*(3)* The federal government may reimburse the state of Montana *on* behalf of counties providing general relief to *enrolled* Indians a sum in lieu of taxes which the counties would collect if the lands of such Indians were not in trust status.

*(4)* (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution shall be the financial responsibility of the appropriate county as provided in subsections *(4)(b) through (4)(d).*

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

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(c) In all cases where a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, he may determine his own county of residence when he is restored to competency and released. *The* person becomes the financial responsibility of the new county of residence."

Section 4. Section 53-4-201, MCA, is amended to read:

**"53-4-201. Definitions.** (1) (a) The term "dependent child", for public assistance purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 19 who is a student under the regulations prescribed by the department.

(b) The child ((a)(i) or (a)(ii) above) must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and be living with *a relative, as defined in rules adopted by the department.*

(2) The term "aid to families with dependent children" means money payments made *on* behalf of a dependent child pursuant to *Title IV of* the federal Social Security Act *(42 U.S.C. 601, et seq.)*, including payments to meet the needs of a relative with whom *the* dependent child is living. The term also *includes* emergency assistance to families with children as provided by the federal Social Security Act.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 5. Section 53-4-233, MCA, is amended to read:

**"53-4-233. Investigation of applications.** Whenever a county department receives an application for assistance *under this part*, an investigation shall be promptly made. The investigation of each application for aid to families with dependent children shall be conducted by the county department *of public welfare*. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of *an* investigation, *aid* shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application."

Section 6. Section 53-4-241, MCA, is amended to read:

**"53-4-241. Amount of assistance determined by department rules.** The amount of aid to families with dependent children granted in

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any case shall be determined according to the rules and standards of assistance established by the department, as required by the federal Social Security Act."

Section 7. Section 53-4-242, MCA, is amended to read:

**"53-4-242. Periodic reconsideration of assistance.** All assistance grants made under this part shall be reconsidered as frequently as may be required by the rules of the department of social and rehabilitation services."

Section 8. **Repealer.** Section 53-4-223, MCA, is repealed.

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Effective dates.** (1) [Section 9 and this section] are effective on passage and approval.

(2) [Sections 1 through 8] are effective July 1, 1989.

Approved March 23, 1989.

# CHAPTER NO. 267

[HB 243]

AN ACT TO PROVIDE SUPERVISED WORK PROGRAMS AND SUPPORT SERVICES FOR PERSONS WITH SEVERE DISABILITIES; TO REDEFINE TERMS AND CLARIFY PROVISIONS RELATING TO SHELTERED WORKSHOPS AND WORK ACTIVITY CENTERS; AMENDING SECTIONS 53-7-201 THROUGH 53-7-204, MCA; AND PROVIDING EFFECTIVE DATES.

## STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 3 and 6] delegate authority to the department of social and rehabilitation services to adopt rules necessary for administration of programs and services provided in [sections 1, 3, and 5].

It is the intent of the legislature, in enacting this bill, to establish a comprehensive program of supervised work and support services for persons with severe disabilities. The program must include sheltered employment, supported employment, work activity, and support services that will help persons who are severely disabled to lead socially and vocationally productive lives so they can be integrated into society.

The department may adopt such rules as are necessary to implement a spectrum of services under the program. Rules may be adopted to govern eligibility for services, certification of services, program staffing, staff training, service goals and design, quality of services, recipient placement procedures, individual service plans, recipient rights and privileges, recipient

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grievance procedures, fair hearings, provider relationships, provider accounting procedures, and any other matters necessary to implement the provisions of this bill.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-7-201, MCA, is amended to read:

**"53-7-201. Legislative findings and purpose.** (1) The purpose of this part is to encourage the development *and* improvement *of* supervised work programs *and support services* for *persons with severe disabilities.*

*(2) Supervised work programs and support services should be available to provide persons with severe disabilities the skills and means by which they may lead socially and vocationally productive lives so they can be integrated into society.*

*(3) The state may encourage the establishment of and provide funding for supervised work programs and support services for persons with severe disabilities."*

Section 2. Section 53-7-202, MCA, is amended to read:

**"53-7-202. Definitions.** (1) "Department" means the department of social and rehabilitation services.

*(2) "Severe disability" means a severe physical or mental impairment that seriously limits a person's functional capacities in respect to obtaining employment.*

*(3)* "Sheltered *employment*" means a recognized program of rehabilitation, remunerative employment, or other occupational rehabilitating activity of an educational or therapeutic nature *provided by a nonprofit sheltered workshop provider. Sheltered employment includes job skills and social skills training and remunerative employment.*

*(4) "Supervised work program" means a program providing guidance in learning and achieving the requirements of job performance through work activity, sheltered employment, and supported employment.*

*(5) "Supported employment" means competitive work in an intergrated work setting for a person with a severe disability who is in need of assistance in order to become employed or remain employed. Supported employment includes assessment, preplacement preparation, job development, job placement, job skills training, and support services.*

*(6) "Support services" means continuous or periodic job skills training provided to a person at a worksite to enable the person to perform work. Support services also include services away from the worksite that are necessary to allow a person with a severe disability to participate in a supervised work program, such as transportation, direction and assistance in functional skills, and counseling for family members.*

(7) "Work activity" means therapeutic *work-related* activities *provided by a nonprofit work activity center provider to persons* whose physical or

mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic *work-related* activities include *training in* basic skills of living and any purposeful activity so long as work or production is not the main purpose."

Section 3. Section 53-7-203, MCA, is amended to read:

**"53-7-203. Purchase of services.** (1) The department may purchase *services under this part* for persons *with severe disabilities, to the extent that funds are appropriated and allocated,* from any sheltered *employment provider,* work activity center, *supported employment provider, or support services provider* within Montana.

(2) *An organization may* receive *funding under* this part *if it meets the* standards and criteria promulgated by the department.

(3) *The department shall adopt standards and criteria for the services purchased under this part to assure the quality and appropriateness of such services. The department may adopt standards and criteria of a nationally recognized accreditation organization for accrediting facilities providing services under this part.*"

Section 4. Section 53-7-204, MCA, is amended to read:

**"53-7-204. Federal and other aid.** *(1) The department may apply for and receive federal aid money or other funding available for the programs provided for under this part.*

*(2)* Federal funds *and other funding* as may be available are appropriated to the department for use in administering the provisions of this part."

Section 5. **Eligibility for services.** (1) A person may receive services provided for under this part if the department determines that:

(a) the person has a severe disability;

(b) the person lacks social competence, mobility, experience, skills, training, or other characteristics of independence;

(c) the person is in need of services provided for under this part; and

(d) the needed services are available for that person.

(2) The receipt of services under this part by an eligible person shall be governed by an individual service plan developed in accordance with state and federal requirements.

Section 6. **Rulemaking.** For the purposes of providing supervised work programs and support services for persons with severe disabilities, the department may adopt rules necessary for the administration of such programs. Rules adopted may include but are not limited to rules regarding eligibility for services, certification of services, program staffing, staff training, service goals and design, quality of services, recipient placement procedures, individual service plans, recipient rights and privileges, recipient grievance procedures, fair hearings, provider relationships, provider accounting procedures, and definitions necessary to implement this part.

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Section 7. **Coordination requirements — consolidation of services authorized.** (1) The governor shall assure that services under this part are coordinated with programs and services in Title 53, chapter 7, parts 1 and 3, and Title 53, chapter 19, part 1, that are administered by the department with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under this part with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

Section 8. **Codification instruction.** [Sections 5 through 7] are intended to be codified as an integral part of Title 53, chapter 7, part 2, and the provisions of Title 53, chapter 7, part 2, apply to [sections 5 through 7].

Section 9. **Effective dates.** (1) [Sections 6 through 8 and this section] are effective on passage and approval.

(2) [Sections 1 through 5] are effective July 1, 1989.

Approved March 23, 1989.

# CHAPTER NO. 268

[HB 270]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ESTABLISH AND MAINTAIN A CENTRALIZED ELECTRONIC BULLETIN BOARD SYSTEM.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definition of electronic bulletin board.** As used in [sections 2 and 3], "electronic bulletin board" means a remote database system containing various types of information accessible by means of a computer, a modem, and a telephone line.

Section 2. **Establishment.** The department of administration shall establish and maintain, as a pilot project, a centralized electronic bulletin board system for state agencies to use as a means of conveying information to the citizens of Montana. Agencies involved in communicating information to the public shall maintain appropriate information on the bulletin board system. The purpose of this pilot project is to encourage the practice of providing for direct citizen access to state computerized information.

Section 3. **Responsibilities.** (1) The department of administration shall:

(a) set standards for the selection of software for the electronic bulletin boards; and

(b) determine procedures for bulletin board use.

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(2) The department of administration shall provide security to protect the integrity of its electronic bulletin board system. Each department is responsible for ensuring the integrity and appropriateness of the information that it places in the system.

(3) The department of administration shall provide for an equitable method for recovering the cost of operating the electronic bulletin board system.

Section 4. **Report to the legislature.** The department of administration shall submit a report to the 52nd legislature that evaluates the effectiveness of the centralized electronic bulletin board system, provides a cost analysis of the system, and presents recommendations for improving or enhancing the system.

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 2, chapter 17, part 3, and the provisions of Title 2, chapter 17, part 3, apply to [sections 1 through 3].

Approved March 23, 1989.

## CHAPTER NO. 269

[HB 273]

AN ACT TO CONTINUE THROUGH JUNE 30, 1991, THE PROGRAM FOR PROVIDING ASSISTANCE TO FINANCIALLY DISTRESSED FARMERS AND RANCHERS; TO PROVIDE CLARIFYING DEFINITIONS; AMENDING SECTIONS 80-13-102 THROUGH 80-13-104, MCA; REPEALING SECTION 15, CHAPTER 9, SPECIAL LAWS OF MARCH 1986; SECTIONS 4 AND 5, CHAPTER 481, LAWS OF 1987; AND SECTIONS 7 AND 11, CHAPTER 605, LAWS OF 1987; REPEALING, EFFECTIVE JULY 1, 1991, SECTIONS 80-13-101 THROUGH 80-13-104, 80-13-111, 80-13-201 THROUGH 80-13-204, AND 80-13-211 THROUGH 80-13-214, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-13-102, MCA, is amended to read:

**"80-13-102. (Temporary) Definitions.** As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Agricultural production" means the production of livestock, poultry, field crops, fruit, or other animal and vegetable matter for food or fiber.

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*(2) "Agricultural property" means:*

*(a) real property that is principally used for agricultural production; and*

*(b) personal property that is part of an agricultural production operation or used as security to finance such an operation. Personal property includes equipment, crops, livestock, and the proceeds of any security.*

*(3)* "Department" means the department of agriculture provided for in 2-15-3001.

*(4)* "Farmer" means a person who owns or operates a farm or ranch primarily for the purpose of agricultural production.

*(5) "Mediator" means a person authorized under 80-13-202 to serve as a negotiator between a farmer and a creditor.*

*(6) "Peer counselor" means a person who:*

*(a) is or has been involved in production agriculture;*

*(b) has been trained through the department and others in counseling; and*

*(c) works to aid financially distressed agricultural producers through this program.*

*(7) "Program" means the agricultural assistance program provided for in 80-13-103 and 80-13-201.*

*(8) "Secured creditor" means:*

*(a) the holder of a mortgage on agricultural property;*

*(b) a vendor of a contract for deed on agricultural property;*

*(c) a person with a statutory lien or a perfected security interest in agricultural property; or*

*(d) a judgment creditor with a judgment against a debtor engaged in agricultural production*

*(9) "Unsecured creditor" means a person who extends credit without a perfected security interest to a farmer for the purchase of goods or services used in agricultural production."*

Section 2. Section 80-13-103, MCA, is amended to read:

**"80-13-103. (Temporary) Establishment of program.** (1) The department shall establish *an agricultural assistance* program to aid financially distressed farmers in this state.

(2) Under the program, the department shall make available to farmers the following types of assistance:

(a) farm financial consulting;

*(b) voluntary debt mediation as provided for in part 2 of this chapter;*

*(c)* support counseling; and

*(d)* information and referral services."

Section 3. Section 80-13-104, MCA, is amended to read:

**"80-13-104. (Temporary) Powers and duties of department.** (1) For the purpose of administering the program, the department shall:

(a) utilize the services of:

(i) a network of trained peer counselors who can directly assist financially distressed farmers;

(ii) the cooperative extension service and the college of agriculture at Montana state university;

(iii) state or federal agencies;

(iv) community service organizations;

(v) private business;

(vi) professional organizations;

(vii) regional mental health corporations;

(viii) volunteer organizations; and

(ix) any other person or entity capable of providing assistance to farmers;

(b) contract for services with qualified personnel, including peer counselors, farm financial consultants, *and mediators,* to provide the assistance required under 80-13-103;

(c) hire a coordinator and necessary staff to implement and manage the program;

(d) provide training for interested and qualified persons, including peer counselors, *farm financial consultants, and mediators,* to assist farmers needing help with farm financial management problems; and

(e) *continue to maintain* a toll-free telephone line to receive requests for assistance, counseling, and referral of services.

(2) The department may *continue* an advisory board to assist the department in determining policy and in developing plans for administration of the program. Members of the advisory board shall serve without compensation.

(3) The department may adopt rules necessary for the administration of the program.

(4) The department may charge reasonable fees to defray the costs of providing financial consulting services under this part."

Section 4. **Repealer.** Section 15, Chapter 9, Special Laws of March 1986; sections 4 and 5, Chapter 481, Laws of 1987; and sections 7 and 11, Chapter 605, Laws of 1987, are repealed.

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Section 5. **Repealer.** Sections 80-13-101 through 80-13-104, 80-13-111, 80-13-201 through 80-13-204, and 80-13-211 through 80-13-214, MCA, are repealed.

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Effective dates.** (1) [Sections 1 through 4 and 6 through 8] are effective July 1, 1989.

(2) [Section 5] is effective July 1, 1991.

Approved March 23, 1989.

# CHAPTER NO. 270

[HB 292]

AN ACT TO INCREASE THE RATE AT WHICH A FINE IS PAID OFF BY IMPRISONMENT IN LIEU OF PAYMENT OF THE FINE; AND AMENDING SECTIONS 46-17-302, 46-18-403, AND 46-19-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-17-302, MCA, is amended to read:

**"46-17-302. Execution of judgment.** (1) The judgment must be executed by the sheriff, constable, marshal, or policeman of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied in the proportion of 1 day's imprisonment for every *$25* of the fine. When *the* judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter must return the execution to the judge within 30 days from its delivery to him and pay over to the judge the money collected, deducting his fees for the collection."

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Section 2. Section 46-18-403, MCA, is amended to read:

**"46-18-403. Credit for incarceration prior to conviction.** (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to or after conviction, except that in no case shall the time allowed as a credit exceed the term of the prison sentence rendered.

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of *the* offense shall be allowed a credit of *$25* for each day incarcerated prior to conviction, except that in no case shall the amount allowed or credited exceed the amount of the fine."

Section 3. Section 46-19-102, MCA, is amended to read:

**"46-19-102. Execution of a fine.** (1) If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until *the* fine *is* paid, the defendant must be committed to the custody of the proper officer and detained until the judgment is complied with. The imprisonment must not exceed 1 day for every *$25* of the fine."

Approved March 23, 1989.

# CHAPTER NO. 271

[HB 310]

AN ACT REVISING THE MONTANA YOUTH COURT ACT; CHANGING THE TIME IN WHICH A PETITION CHARGING A YOUTH HELD IN DETENTION MUST BE FILED FROM 5 WORKING DAYS TO 7 WORKING DAYS; ALLOWING HEARINGS TO DETERMINE PROBABLE CAUSE TO DETAIN A YOUTH FOR MORE THAN 24 HOURS TO BE HELD BY A JUSTICE OF THE PEACE, A MUNICIPAL OR CITY JUDGE, OR A MAGISTRATE; PROVIDING THAT RECORDS OF HEARINGS MUST BE MADE EITHER BY A COURT REPORTER OR BY A TAPE RECORDING; AMENDING SECTIONS 41-5-301 AND 41-5-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-5-301, MCA, is amended to read:

**"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, a probation officer shall make a preliminary inquiry into the matter.

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(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

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(7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall be filed."

Section 2. Section 41-5-303, MCA, is amended to read:

**"41-5-303. (Temporary) Rights of youth taken into custody — questioning — hearing for probable cause — detention.** (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, *a justice of the peace, a municipal or city judge, or a magistrate* to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. *If a hearing under this subsection is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.*

(3) At the probable cause hearing, the youth *shall be informed* of his constitutional rights and his rights under this chapter.

(4) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at the probable cause hearing, unless he:

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(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(5) At the probable cause hearing, a guardian ad litem *may be appointed* as provided in 41-5-512.

(6) If *it is determined* that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306. If probable cause *is not found*, the youth must be immediately released.

**41-5-303. (Effective July 1, 1989) Rights of youth taken into custody — questioning — hearing for probable cause — detention.** (1) When a youth is taken into custody for questioning upon a matter which could result in a petition alleging that the youth is either delinquent or in need of supervision, the following requirements must be met:

(a) The youth shall be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive such rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth who has been taken into custody may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court, *a justice of the peace, a municipal or city judge, or a magistrate* to determine whether there is probable cause to believe he is a delinquent youth or a youth in need of supervision. *If a hearing under this subsection is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing shall be made by a court reporter or by a tape recording of the hearing.*

(3) At the probable cause hearing, the youth *shall be informed* of his constitutional rights and his rights under this chapter.

(4) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at the probable cause hearing, unless he:

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(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(5) At the probable cause hearing, a guardian ad litem *may be appointed* as provided in 41-5-512.

(6) If *it is determined* that there is probable cause to believe the youth is delinquent or is a youth in need of supervision and if the youth meets the criteria in 41-5-305, the youth may be placed in a shelter care facility or detention facility as provided in 41-5-306 but may not be placed in a jail or other facility for adults. If probable cause *is not found*, the youth must be immediately released."

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved March 23, 1989.

# CHAPTER NO. 272

[HB 327]

AN ACT TO ALLOW THE BOARD OF LAND COMMISSIONERS TO EXTEND THE PRIMARY TERM OF STATE OIL AND GAS LEASES WHERE, DUE TO LITIGATION, STATE COMPLIANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT, OR ADVERSE CONDITIONS CAUSED BY NATURAL OCCURRENCES, EXPLORATION OR PRODUCTION DURING THE PRIMARY LEASE TERM HAS BEEN PREVENTED OR THE LESSEE IS THREATENED WITH SUBSTANTIAL ECONOMIC LOSS; AMENDING SECTION 77-3-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-3-421, MCA, is amended to read:

**"77-3-421. Duration of lease.** (1) All state oil and gas leases entered by the board shall be granted for a primary term of not more than 10 years or less than 5 years and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee. However, leases for a period of less than 5 years may be issued if the board determines that such shorter term is necessary to ensure full compensation for the oil and gas resource.

(2) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement are considered to be produced from the state lands therein within the meaning of this part.

*(3) The board may grant reasonable extensions of the primary term of a state oil or gas lease upon a showing that the lessee, despite due care and diligence, is or has been directly or indirectly prevented from exploring,*

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*developing, or operating the lease or is threatened with substantial economic loss, due to litigation regarding the lease or another lease in the immediate area held by the same lessee, state compliance with the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, rules adopted under Title 75, chapter 1, or adverse conditions caused by natural occurrences."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 23, 1989.

# CHAPTER NO. 273

[HB 345]

AN ACT PERMITTING FACSIMILE COPIES OF CERTAIN DOCUMENTS TO BE FILED WITH THE SECRETARY OF STATE PENDING FILING OF THE ORIGINAL DOCUMENT WITHIN 5 DAYS; PROVIDING THAT A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE COPY IS LIABLE FOR RESULTANT DAMAGES; AND AMENDING SECTIONS 30-9-403, 35-1-102, AND 35-2-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-9-403, MCA, is amended to read:

**"30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) *(a)* Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

*(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (1)(a) if it:*

*(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and*

*(ii) is legible and the same size as the original.*

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*(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.*

*(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1)(b), the filing of the facsimile copy is void.*

*(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.*

(2) Except as provided in subsections (6) and (11), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until *60 days after* termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements

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according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be set pursuant to subsection (13).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within one working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that he shall establish. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to

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mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

(11) When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.

(12) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(13) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit in a state special revenue fund in the state treasury all fees he collects, and the fee money may be paid out of the treasury only on appropriation made by the legislature as provided in 17-8-101. Any fee money collected under this part and remaining in the state treasury after all current fiscal year expenditures are met must be transferred to the general fund. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 2. Section 35-1-102, MCA, is amended to read:

**"35-1-102. Definitions.** As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation and is synonymous with the term "stockholder". If the articles of incorporation or the bylaws so provide, the board of directors may adopt

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by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth the classification of a shareholder who may certify; the purpose or purposes for which the certification may be made; the form of certification and information to be contained therein; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the corporation; and other provisions with respect to the procedure as are considered necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(9) *(a)* "Filed with the secretary of state" *is considered* to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. *The* finding *relates* back to the time of receipt, but receipt by the secretary of state *may* not of itself constitute filing under this chapter.

*(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of subsection (9)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (9)(a) if it:*

*(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and*

*(ii) is legible and the same size as the original.*

*(c) During the 5-day period referred to in subsection (9)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.*

*(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (9)(b), the filing of the facsimile copy is void.*

*(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.*

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise."

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Section 3. Section 35-2-102, MCA, is amended to read:

**"35-2-102. Definitions.** As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(3) "Nonprofit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which *the* rules are designated.

(6) "Member" means one's having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which *the* group is designated.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(9) *(a)* "Filed with the secretary of state" *is considered* to be the time of receipt of a document by him if he subsequently finds that it conforms to law. *The* finding *relates* back to the time of receipt, but receipt by the secretary of state *may* not of itself constitute "filing" under this chapter.

*(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of subsection (9)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (9)(a) if it:*

*(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and*

*(ii) is legible and the same size as the original.*

*(c) During the 5-day period referred to in subsection (9)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.*

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*(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (9)(b), the filing of the facsimile copy is void.*

*(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document."*

Section 4. **Filing of a facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under [this chapter or part] and the signatures on the facsimile copy in the same manner as an original for purposes of [this chapter or part], provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Codification instruction.** [Section 4] is intended to be codified as an integral part of the following chapters and parts, and the provisions of those chapters and parts apply to [section 4]:

(1) parts 2 and 3 of chapter 13, Title 30;

(2) part 10 of chapter 1, Title 35;

(3) chapters 12 and 15 of Title 35; and

(4) part 4 of chapter 9, Title 30.

Approved March 23, 1989.

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# CHAPTER NO. 274

[HB 362]

AN ACT TO ALLOW THE STATE OF MONTANA TO ACCEPT AND DISPOSE OF LANDS, INCLUDING BUILDINGS, GRANTED BY THE UNITED STATES PURSUANT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980; AND AMENDING SECTIONS 75-10-701, 77-1-211, AND 77-2-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-10-701, MCA, is amended to read:

**"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Fund" means the environmental quality protection fund established in 75-10-704.

(3) "Hazardous or deleterious substance" means a substance that poses an imminent and substantial threat to public health and that is either a petroleum product or listed as a hazardous substance in volume 50, Federal Register, pages 13474 through 13513.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance either directly into the environment or in a manner in which the substance can reasonably be expected to enter the environment if not contained, removed, or abated, but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

(5) "Remedial action" includes all investigation, monitoring, cleanup, restoration, abatement, removal, replacement, *acquisition,* and other actions necessary or appropriate to respond to a release."

Section 2. Section 77-1-211, MCA, is amended to read:

**"77-1-211. Acceptance of federal land grants.** (1) The board may accept any grant of lands from the United States to the state made in carrying out the provisions of The Enabling Act and also any other grant for any special purpose that may be made by the United States to the state, except as provided in subsection (2).

(2) Legislative approval is required for any acceptance of land by the state of Montana from the United States if the land was acquired by the United States through condemnation procedures.

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*(3) Notwithstanding any provisions of this title, the board, after consultation with the director of the department of health and environmental sciences, may accept any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq. Legislative approval is not required for such acceptance."*

Section 3. Section 77-2-302, MCA, is amended to read:

**"77-2-302. Disposition of former institutions and certain federal land grants.** *(1)* Notwithstanding any other section in this chapter, any lands, including buildings, formerly used as or by a state institution which are no longer used for institutional purposes may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to The Enabling Act and constitutional restrictions. Disposal of such property shall not be finally concluded until 60 days' public notice of the terms of the proposed disposal shall have been given.

*(2) Notwithstanding any other section in this chapter, any lands, including buildings, granted to the state by the United States pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or acquired by the state as remedial action pursuant to sections 75-10-704, 75-10-711, or 75-10-712 may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the director of the department of health and environmental sciences, determines to be in the state's best interest."*

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 23, 1989.

## CHAPTER NO. 275

[HB 366]

AN ACT TO PROVIDE THAT 5 PERCENT OF THE FEES COLLECTED BY A COUNTY TREASURER FOR DRIVER'S LICENSES, DUPLICATE DRIVER'S LICENSES, AND COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENTS ARE TO BE DEPOSITED IN THE COUNTY GENERAL FUND; AMENDING SECTION 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-5-121, MCA, is amended to read:

**"61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements

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provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 33 ⅓% of each driver's license fee and of each duplicate driver's license fee must be deposited into the Montana highway patrolmen's retirement pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 23 ⅓% of each driver's license fee and of each duplicate driver's license fee and the amount of 35% of each motorcycle endorsement fee must be deposited into the state traffic education account.

(e) The amount of *38 ⅓%* of each driver's license fee and of each duplicate driver's license fee and the amount of 60% of each motorcycle endorsement fee must be deposited into the state general fund.

(f) *If the fee is collected by the county treasurer or other agent of the department, the* amount of *5% of* each commercial vehicle operator's endorsement fee must be deposited into the *county general fund, otherwise all of the fee must be deposited in the* motor vehicle recording account established in 61-3-108.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement pension trust fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(d), (1)(e), and (1)(f).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be

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deposited into the Montana highway patrolmen's retirement pension trust fund, the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), (1)(d), (1)(e), and (1)(f)."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved March 23, 1989.

# CHAPTER NO. 276

[HB 409]

AN ACT CLARIFYING THAT THE ATTORNEY-CLIENT PRIVILEGE APPLIES TO THE CLIENT; AMENDING SECTION 26-1-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, a majority of courts in the United States have broadly construed the attorney-client privilege as protecting the client as well as his attorney from being compelled to disclose their confidential communications; and

WHEREAS, the United States District Court for the District of Montana, in the recent case of Lane v. All Nation Insurance Company, CV-86-054-GF (June 17, 1987), strictly construed Montana's statute regarding attorney-client privilege to allow the client to be examined concerning his confidential communications with his attorney; and

WHEREAS, the Legislature intends to amend and clarify the Montana statute to make it clear that, contrary to the Lane decision, the attorney-client privilege extends to protect the client from being required to disclose confidential communications between him and his attorney; and

WHEREAS, the courts through the common law have developed several exceptions to the attorney-client privilege; and

WHEREAS, the Legislature does not intend by this act to abolish, amend, or otherwise affect any other exceptions to the attorney-client privilege.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the statute regarding attorney-client privilege.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-1-803, MCA, is amended to read:

**"26-1-803. Attorney-client privilege.** *(1)* An attorney cannot, without the consent of his client, be examined as to any communication made

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by the client to him or his advice given *to the client* in the course of professional employment.

*(2) A client cannot, except voluntarily, be examined as to any communication made by him to his attorney or the advice given to him by his attorney in the course of the attorney's professional employment.*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 23, 1989.

# CHAPTER NO. 277

[HB 454]

AN ACT TO PROHIBIT TRIAL DE NOVO IN DISTRICT COURT AFTER ENTRY OF A GUILTY PLEA IN A LOWER COURT; AND AMENDING SECTIONS 3-5-303, 3-11-301, 46-17-203, AND 46-17-311, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-5-303, MCA, is amended to read:

"**3-5-303. Appellate jurisdiction.** *Except as provided in 46-17-203, the* district court has appellate jurisdiction in cases arising in justices' courts and other courts of limited jurisdiction in their respective districts as may be prescribed by law and consistent with the constitution."

Section 2. Section 3-11-301, MCA, is amended to read:

"**3-11-301. City attorney to prosecute.** *Except as provided in 46-17-203, the* city attorney must prosecute all cases for the violation of any ordinance and prosecute, conduct, and control all proceedings in cases mentioned in 3-11-103, both in the city court and on appeal *from the city court* to the district court."

Section 3. Section 46-17-203, MCA, is amended to read:

"**46-17-203. Plea of guilty.** *(1)* Before or during trial, a plea of guilty may be accepted when:

*(a)* the defendant enters a plea of guilty in open court; and

*(b)* the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of *the* plea.

*(2) A plea of guilty in a justices' court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.*"

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Section 4. Section 46-17-311, MCA, is amended to read:

"**46-17-311. Appeal.** (1) *Except as provided in 46-17-203, all* cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) A party may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment, except that the state may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the appellant to perfect the appeal."

Approved March 23, 1989.

# CHAPTER NO. 278

[HB 470]

AN ACT TO ALLOW A BANKING CORPORATION TO ELIMINATE OR LIMIT A DIRECTOR'S PERSONAL LIABILITY TO THE CORPORATION OR ITS SHAREHOLDERS FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY DUTY; AMENDING SECTION 32-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-1-301, MCA, is amended to read:

"**32-1-301. Organization and incorporation — articles of agreement.** *(1)* Any three or more persons desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this chapter shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement which shall set forth:

*(a)* the corporate name of the proposed corporation, which *may* not be the name of any other corporation granted and then doing business of a similar character in this state or any imitation of *a* name, provided that it *is* lawful to use the name used by any corporation previouslv incorporated and doing business in the state of Montana but which has been disincorporated, liquidated, dissolved, and *is* entirely out of business. *A* banking corporation *may not* adopt or use the name of any other banking corporation or association, or of any friendly association.

*(b)* the name of the city or town and county in which the principal office of the corporation is to be located;

*(c)* the amount of the capital stock of the corporation, the number of shares into which it is to be divided, and the par value of shares; the amount of capital stock actually subscribed in good faith at the time of the signing of *the* articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody of some banking institution designated as the depository *of the money* until the proposed corporation is fully organized and authorized to engage in business;

*(d)* the names and places of residence of the several shareholders and the number of shares subscribed by each;

*(e)* the number of the board of directors and the names of those agreed upon for the first year. The articles may provide that the number of directors elected at each annual meeting shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders.

*(f)* the purpose for which the association or company is formed, which may be set forth by the use of the general terms defined *in this chapter*, with reference to each line of business in which the proposed corporation desires to engage.

*(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:*

*(a) for breach of a director's duty of loyalty to a corporation or its shareholders;*

*(b) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law; or*

*(c) for a transaction from which a director derives an improper personal benefit."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date — applicability.** (1) [This act] is effective on passage and approval.

(2) [This act] applies to acts and omissions occurring after the effective date of [this act].

Approved March 23, 1989.

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# CHAPTER NO. 279

[HB 499]

AN ACT IMPOSING A FELONY PENALTY FOR THE MISUSE AND ABUSE OF A CUSTODIAL ACCOUNT; AND AMENDING SECTION 81-8-216, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-8-216, MCA, is amended to read:

**"81-8-216. Penalties.** (1) A person who *knowingly* violates any provision of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted to implement those sections shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel his certificate.

(2) Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% shall be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred.

*(3) A person who knowingly fails to establish and properly use a custodial account resulting in a failure to account for or to remit money belonging to others under this chapter is, upon conviction, guilty of a felony."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 23, 1989.

# CHAPTER NO. 280

[HB 519]

AN ACT TO REMOVE THE AUTHORITY OF THE BOARD OF PUBLIC EDUCATION TO PERMIT SCHOOL DISTRICTS TO USE FOUR-WHEEL DRIVE ALTERNATIVE VEHICLES TO TRANSPORT PUPILS TO AND FROM SCHOOL; AMENDING SECTION 20-10-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-10-111, MCA, is amended to read:

**"20-10-111. Duties of board of public education.** (1) The board of public education, with the advice of the Montana department of justice and

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the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. Such policies shall:

(a) prescribe minimum standards for the design and construction of school buses not inconsistent with:

(i) minimum standards adopted by the national commission on safety education; or

(ii) minimum standards adopted by the national highway safety bureau;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish any other driver qualifications *considered* necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee which shall allow for the establishment of such areas without regard to the district boundary lines within the county;

(e) prescribe any other criteria for the determination of the residence of a pupil that may be deemed necessary in addition to the criteria established in 20-10-105;

(f) prescribe any other policies for the operation of school buses which are not inconsistent with:

(i) motor vehicle laws;

(ii) minimum standards adopted for school bus operation by the national commission on safety education;

(iii) highway safety standards; and

(iv) the transportation provisions of this title;

(g) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

*(2)* The board of public education shall prescribe any other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this title."

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Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1990.

Approved March 23, 1989.

## CHAPTER NO. 281

[HB 527]

AN ACT TO PERMIT RELOCATION OF AN ELEMENTARY SCHOOL WITHIN A SCHOOL DISTRICT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Relocation of elementary school within district.** The trustees of an elementary district may relocate an elementary school that is currently operating within the district if the relocation will be more convenient for the majority of the pupils attending. The provisions of 20-6-502 relating to opening or reopening a school do not apply. The provisions of 20-6-603 apply if the new site has not been previously approved as required by 20-6-603.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 6, and the provisions of Title 20, chapter 6, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 23, 1989.

## CHAPTER NO. 282

[HB 604]

AN ACT PROVIDING AN ALLOWANCE ADJUSTMENT FOR MEMBERS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM WHO RETIRED ON OR AFTER JULY 1, 1975; AMENDING SECTION 19-9-1011, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-9-1011, MCA, is amended to read:

"**19-9-1011. Allowance adjustment.** (1) A monthly allowance paid under section 31(3), Chapter 456, Laws of 1977 (formerly section

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11-1890(3), R.C.M. 1947), 19-9-804, 19-9-903, or 19-9-911 to a member retired on or after July 1, 1975, or to his surviving spouse or dependent child may not be less than one-half the monthly compensation paid to a newly confirmed, active police officer of the city that last employed the member as a police officer, as provided each year in the budget of that city.

(2) At the beginning of each fiscal year, the administrator shall request and the state auditor shall pay to the administrator from the premium tax collected from insurance sold in this state to insure against the risks enumerated in 19-11-512(3) an amount sufficient to fund the allowance adjustment provided for in subsection (1)."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved March 23, 1989.

# CHAPTER NO. 283

[HB 636]

AN ACT TO REVISE THE LAWS RELATING TO PER DIEM AND ANCILLARY CHARGES FOR THE CARE OF RESIDENTS AT STATE INSTITUTIONS; AMENDING SECTIONS 53-1-401, 53-1-402, AND 53-1-407, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-1-401, MCA, is amended to read:

**"53-1-401. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary charge" means *the expense of providing* identifiable, direct, resident *services,* including but not limited to*:*

*(a) physicians' services;*

*(b)* x-ray *and* laboratory *services;*

*(c) dental services;*

*(d) speech pathology and audiology services;*

*(e) occupational and* physical therapy*;*

*(f)* medical *supplies;*

*(g) prescribed drugs;* and

*(h)* specialized medical equipment.

(2) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

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(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(5) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(6) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(7) "Per diem" means the gross daily *budgeted* cost of operating an institution *or an individual unit of an institution (*including *certain contracted medical services,* depreciation, and associated department costs but excluding the cost of educational programs, federal grants, ancillary charges, and costs not directly identified with patient care*) divided by the full-time equivalent resident load.*

(8) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

(9) "Third-party resource" means but is not limited to applicable medicare, medicaid, and personal health care benefits."

Section 2. Section 53-1-402, MCA, is amended to read:

**"53-1-402. Residents subject to per diem and ancillary charges.** The department shall *assess and* collect per diem and ancillary *charges* for the care of residents in the following institutions:

(1) Montana state hospital;

(2) Montana developmental center;

(3) Montana veterans' home;

(4) Montana center for the aged;

(5) Eastmont human services center."

Section 3. Section 53-1-407, MCA, is amended to read:

**"53-1-407. Appeal of determination of ability to pay.** If a resident or financially responsible person disagrees with the *final* determination of the department as to his ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date of the department's determination in any court of record in Montana having jurisdiction of the resident or financially responsible person liable for payment."

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Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved March 23, 1989.

# CHAPTER NO. 284

[HB 658]

AN ACT TO ESTABLISH AN AGRICULTURAL DEVELOPMENT LOAN PROGRAM CONSISTING OF SEED CAPITAL AND RESEARCH AND DEVELOPMENT PROJECTS; TO ESTABLISH PRIORITIES AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO ESTABLISH THE REQUIREMENTS AND PAYBACK PROVISIONS OF SEED CAPITAL AND RESEARCH AND DEVELOPMENT PROJECT LOAN AGREEMENTS; TO PROVIDE FOR PAYBACK; TO PROVIDE RULEMAKING AUTHORITY FOR THE AGRICULTURE DEVELOPMENT COUNCIL; AMENDING SECTIONS 90-9-103, 90-9-202, 90-9-301, 90-9-302, 90-9-306, 90-9-307, AND 90-9-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 9] grants rulemaking authority to the Montana agriculture development council to implement the agricultural development project loan program.

It is the legislature's intent that the council adopt rules:

(1) governing the conduct of council business;

(2) establishing application procedures that, at a minimum, require the submittal of an executive summary for an agricultural development project loan, a business plan for a seed capital project loan, a research and development project proposal for a research and development project loan, and other documents necessary to meet the criteria established in the act;

(3) establishing procedures to be followed by the council in its review process prior to making an agricultural development project loan;

(4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the council that may be required in an agricultural development project loan agreement.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **General criteria underlying agricultural development project loans.** The council may make an agricultural development project loan only upon a favorable determination that the proposed agricultural development project:

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(1) is consistent with the findings and purposes of the act because it incorporates innovative agricultural technology;

(2) has prospects for collaboration between the public and private sectors of the state's economy;

(3) has prospects for achieving commercial success and for creating new jobs in the state;

(4) has potential for commercial success related to the specific product, process, or business development methodology proposed;

(5) can provide matching funds;

(6) has potential to benefit existing agricultural business;

(7) can be reasonably expected to provide an economic return within a reasonable period of time;

(8) involves processing or adding value to agricultural products produced in the state; and

(9) has a management structure that allows ongoing postdisbursement involvement by the council.

Section 2. **Seed capital projects — program goals.** (1) The council may make a seed capital project loan to a seed capital project if it determines that the project meets the loan criteria established in [sections 1 and 3] and further determines that the project meets the goals established in subsection (2) and involves development and commercialization of innovative agricultural products or processes.

(2) The goals of this program are:

(a) to assist in the development of innovative technology in the state by providing a source of capital to the agricultural-based sector of the state's economy;

(b) to provide financing and follow-along management support for agricultural businesses in the state that are attempting to develop agricultural products or processes based on innovative technologies; and

(c) to provide a liaison between agricultural businesses in the state and investors in an effort to enhance the pool of capital available to agricultural businesses in the state.

Section 3. **Specific criteria for seed capital project loans.** The council may make a seed capital project loan only if it determines that the proposed project complies with the criteria and goals set forth in [sections 1 and 2] and further determines that:

(1) the project develops or employs innovative agricultural products or processes that promise a significant competitive advantage;

(2) the project requires financing that is not available from conventional lending sources;

(3) the project provides an opportunity to preserve the principal of the loan amount and to earn a monetary return;

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(4) the company is located or preparing to locate within the state;

(5) the project demonstrates a capacity to diversify or add value to the state's agricultural businesses;

(6) the company's management team possesses sufficient agricultural business experience;

(7) the company has potential for creating and retaining jobs and stimulating tax revenue growth in the state;

(8) the company's agricultural product or process is targeted for a commercial market;

(9) the company's product or process is of sufficient quality to significantly impact the target market; and

(10) if applicable, the company's business plan is designed to provide financing, marketing, and production milestones to accomplish the proposed commercialization.

Section 4. **Research and development project — program goals.** (1) The council may make a research and development project loan if it determines that the project meets the loan criteria established in [sections 1 and 5] and further determines that the project meets the goals established in subsection (2).

(2) The goals of this program are:

(a) to significantly upgrade existing agricultural research capabilities within the state's research and development institutions and organizations;

(b) to provide financial support to individual research projects that have significant potential to advance development of agricultural business in the state;

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace;

(d) to provide financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel;

(e) to facilitate the flow of information to agricultural-based businesses in the state in order to assist those businesses in reaching their full commercial potential; or

(f) to improve the information and resources available to the state's agricultural businesses involved in commercialization of innovative agricultural products and processes.

Section 5. **Specific criteria for research and development project loans.** The council may make a research and development project loan only if it determines that the proposed project substantially complies with the criteria and goals set forth in [sections 1 and 4] and further determines that the project:

(1) has the potential to diversify or add value to the state's agricultural economy;

(2) demonstrates a clear path to commercial development of the research results within the state;

(3) involves university system research participation, if appropriate;

(4) employs or otherwise takes advantage of existing research and development strengths within the state's university and private research establishment;

(5) involves a realistic and achievable research project design;

(6) develops or employs innovative agricultural products or processes; and

(7) is located within the state.

Section 6. **Agricultural development project loan agreement — contents — council decisions final.** (1) If the council determines that an agricultural development project meets the criteria established in the act and has complied with the applicable procedures and review processes established by the council, the council may enter into an agricultural development project loan agreement with the company and authorize the disbursement of funds to the company.

(2) The loan agreement, at a minimum, must contain the following provisions:

(a) the project budget;

(b) the financing, marketing, and production milestones for the project that describe project tasks to be achieved at designated times in each area;

(c) the reporting requirements, including but not limited to:

(i) financial statements to be submitted on at least an annual basis as determined by the council;

(ii) quarterly commercialization progress reports;

(iii) annual reports; and

(iv) reports on any significant project transactions;

(d) the disbursement schedule for the loan;

(e) the payback to the council;

(f) the causes for loan revocation, suspension, or termination; and

(g) the intellectual property provisions.

(3) All decisions of the council are final and are not subject to the contested case provisions of Title 2, chapter 4.

Section 7. **Seed capital project loan agreement — specific loan requirements — payback.** (1) In addition to the loan requirements of [section 6], a seed capital project loan must be structured as contracted debt, including but not limited to the following terms:

(a) an interest rate set at a level that provides for a return to the council, from paybacks by all of its portfolio companies, an amount at least

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equal to the principal amount of the loan and that provides for a market rate of return when considering the overall benefit to the state derived from the projects;

(b) a provision in the note that may defer debt service until maturity of the note, the term of which may not exceed 8 years;

(c) a loan amount that may not exceed $50,000 in any one round of financing. Successive rounds of financing in which the council participates for any one company may not occur within a 9-month period. The total amount that may be loaned to any one company may not exceed $150,000.

(d) a provision that the note becomes due in full upon dissolution or liquidation of the company;

(e) a provision that the company will provide the council with a second priority security interest in all of the equipment used in the company's business, accounts receivable, and inventory to secure repayment of the loan;

(f) a provision that the priority security interest in the company's assets referred to in subsection (1)(e) will be evidenced by appropriate forms required to secure the assets as provided in Title 30, chapter 9.

(2) In addition to the provisions in [section 6] and subsection (1) of this section, a seed capital project loan agreement may provide for any of the following:

(a) a convertible debenture;

(b) a warrant held by the council; or

(c) a warrant held by a third party for the benefit of the council.

Section 8. **Research and development project loan agreement — specific loan requirements — payback.** In addition to the loan requirements of [section 6], a research and development project loan agreement must be structured as contracted debt, including but not limited to the following terms:

(1) The agreement must include provisions calling for a payback of two times the original loan amount, paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the council's financing. This percentage rate may not exceed 5%.

(2) The payback for an agricultural technology transfer and assistance project loan may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of the act. No more than 10% of the council's funds designated for research and development in any one fiscal year may be used for agricultural technology transfer and assistance loans.

Section 9. **Rulemaking.** The council shall adopt rules necessary to implement the provisions of this chapter, including but not limited to rules:

(1) governing the conduct of council business;

(2) establishing application procedures that, at a minimum, require the submittal of an executive summary for an agricultural development project loan, a business plan for a seed capital project loan, a research and development project proposal for a research and development project loan, and other documents necessary to meet the criteria established in the act;

(3) establishing procedures to be followed by the council in its review process prior to making an agricultural development project loan;

(4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the council that may be required in an agricultural development project loan agreement.

Section 10. Section 90-9-103, MCA, is amended to read:

**"90-9-103. Definitions.** As used in this chapter, the following definitions apply:

*(1) "Act" means the Montana Growth Through Agriculture Act.*

*(2)* "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to an *agricultural* enterprise.

*(3) "Agricultural development project" means either a seed capital or research and development project designed to discover, develop, transfer, use, or commercialize existing or new agricultural products or processes in order to strengthen and enhance agricultural economic development in the state.*

*(4) "Agricultural development project loan agreement" or "loan" means an agreement entered into between the council and the loan recipient of a seed capital project loan or a research and development project loan that:*

*(a) creates a debt relationship between the parties;*

*(b) provides for a financial return to the council;*

*(c) provides economic development potential to the state; and*

*(d) contains various provisions and terms as required by the act.*

*(5) "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.*

*(6) "Convertible debenture" means a debenture convertible into stock under certain conditions by an individual or company, but not by the council.*

*(7)* "Council" means the Montana agriculture development council established in 2-15-1817.

*(8) "Debenture" or "note" means a writing or certificate issued as evidence of debt.*

*(9) "Department" means the department of agriculture established in 2-15-3001.*

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*(10) "Expansion capital project" means an agricultural technology development project undertaken to enable an individual or a company to expand its manufacturing and marketing activities in order to move its agricultural products or services into new markets or to expand existing markets.*

*(11) "Innovative agricultural technology" means the involvement of an agricultural product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.*

*(12)* "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in *90-9-302 and 90-9-401.*

*(13) "Matching funds" means the funds received in cash by the agricultural development project loan recipient from nonstate appropriated sources and contributed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the council for use in the agricultural development project.*

*(14) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the council.*

*(15) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.*

*(16) "Research and development project" means an agricultural development project that falls into the category of applied technology research or agricultural technology transfer and assistance.*

*(17) "Research and development project loan" means an agricultural development project loan agreement entered into between the council and a loan recipient for a research and development project.*

*(18) "Seed capital project" means a startup or expansion capital project.*

*(19) "Seed capital project loan" means an agricultural development project loan entered into between the council and a loan recipient for a seed capital project.*

*(20) "State" means the state of Montana.*

*(21) "Technology transfer and assistance project" means an agricultural development project that:*

*(a) transfers technology research from the laboratory to the marketplace; or*

*(b) provides better access and exposure to business development assistance or information for researchers or early-stage agricultural businesses that commercialize agricultural technology products.*

*(22) "Warrant" means an instrument issued by a corporation giving a holder other than the council the right to purchase stock of a corporation at a fixed price, either for a limited time or perpetually."*

Section 11. Section 90-9-202, MCA, is amended to read:

**"90-9-202. Powers and duties of the council.** The council shall:

(1) establish policies and priorities to enhance the future development of agriculture in Montana;

(2) make investments *or loans* in agricultural development projects that have a short- or long-term ability to stimulate agriculture development and diversification in Montana, including but not limited to:

(a) seed capital *loans* for development and commercialization of new products and processes;

(b) agricultural business incubators;

(c) foreign and domestic market development activities;

(d) applied technological research; and

(e) agricultural technology assistance and transfer; *and*

(3) accept grants or receive devises of money or property for use in making the investments *or loans authorized by* this chapter."

Section 12. Section 90-9-301, MCA, is amended to read:

**"90-9-301. Agriculture seed capital account — matching funds.** (1) There is an agriculture seed capital account administered by the council.

(2) The council may *loan* money from the agriculture seed capital account to support research relating to innovative organizational improvements in agricultural businesses and to the commercialization and marketing of new agricultural products or agricultural production processes.

*(3) The council may not make a loan to an agricultural development project for which the matching funds have not been received. Matching funds are required prior to any expenditure of state funds for research and development or seed capital projects. The council may accept as matching funds those funds received by the loan recipient within 1 year prior to the execution of the loan agreement."*

Section 13. Section 90-9-302, MCA, is amended to read:

**"90-9-302. Agricultural business incubator program — criteria — limitations.** (1) There is an agricultural business incubator program account in the state special revenue fund. The council may invest from the account an amount not to exceed $100,000 in *each* agricultural business *incubator*. The *incubator* must operate as *a* self-financing business development *entity*, providing such services as training, management consultation, accounting, and office space, *if necessary*, to eligible agricultural businesses. *Eligible* agricultural businesses may include but are not limited to marketing cooperatives and associations.

(2) Investments under this section must be awarded by the council, based upon its review of the following criteria:

(a) the potential ability of the applicant to be financially self-sufficient;

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(b) identification of businesses or industries targeted for development assistance;

(c) community support for the incubator program; and

(d) a plan to address business development needs of specific user groups, *including but not limited to* displaced farmers.

(3) Investments may be made only in agricultural business incubators that are located in different geographic areas of the state and that are not located in a municipality with a population in excess of 15,000 people. The municipality or community in which the incubator is located must provide funding or contributions *on at least a dollar-to-dollar basis.* Contributions by applicants may include land, buildings, or professional services."

Section 14. Section 90-9-306, MCA, is amended to read:

**"90-9-306. Appropriation authority and funding — prohibited investments.** (1) The council has authority to accept and expend all funds received by it as grants, donations, or other private or public income, including amounts repaid as principal and interest on investments made by the council. These funds are statutorily appropriated to the council as provided in 17-7-502.

*(2)* Council members may not personally apply for or receive council funds. If an organization with which a member is affiliated applies for council funds, the member must disclose the nature of the affiliation and may not participate in the decision of the council regarding the application."

Section 15. Section 90-9-307, MCA, is amended to read:

**"90-9-307. Accountability.** The council shall develop independent review and audit procedures to ensure that investments *and loans* made by it are used for the purposes identified in its investment *and loan* agreements."

Section 16. Section 90-9-401, MCA, is amended to read:

**"90-9-401. Agricultural marketing enhancement.** The council shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. The council shall:

(1) *assist in placing* one full-time professional marketing person in Japan *or another Pacific Rim country* to develop export marketing opportunities in the Pacific region;

(2) provide assistance for appropriate trade missions of Montana producers, processors, or distributors of agricultural products on a cost-share basis; and

(3) assist in other appropriate means of enhancing domestic markets for Montana agricultural products."

Section 17. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

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Section 18. **Codification instruction.** (1) [Sections 1 through 8] are intended to be codified as an integral part of Title 90, chapter 9, part 3, and the provisions of Title 90, chapter 9, part 3, apply to [sections 1 through 8].

(2) [Section 9] is intended to be codified as an integral part of Title 90, chapter 9, part 2, and the provisions of Title 90, chapter 9, part 2, apply to [section 9].

Section 19. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Effective date.** [This act] is effective on passage and approval.

Approved March 23, 1989.

# CHAPTER NO. 285

[HB 706]

AN ACT AMENDING THE LAWS RELATING TO SURPLUS LINES INSURERS, AGENTS, AND INSURANCE; PROVIDING FOR FUNDING A SURPLUS LINES ADVISORY ORGANIZATION BY A STAMPING FEE; AMENDING SECTIONS 33-2-302, 33-2-303, 33-2-305, 33-2-306, 33-2-308 THROUGH 33-2-310, 33-2-312, 33-2-316, 33-2-317, 33-2-321, 33-17-201, AND 33-17-202, MCA; AND PROVIDING AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the amendment to 33-2-321 grants rulemaking authority to the insurance commissioner to set a stamping fee, not to exceed 1%, that may be collected by a surplus lines advisory organization. It is intended that the insurance commissioner set the stamping fee at an amount that will generate enough income to pay the expenses incurred by the surplus lines advisory organization. It is intended that the insurance commissioner will by rule adjust the amount of the stamping fee as surplus lines advisory organizations' needs change and as the amount of transactions change.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-2-302, MCA, is amended to read:

**"33-2-302. Conditions precedent to sale of surplus lines insurance.** Insurance may be procured through a licensed surplus lines agent from an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

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(2) the full amount or kind of insurance cannot be obtained from authorized insurers. The full amount or kind of insurance may be procured from an eligible surplus lines insurer if the agent makes a diligent search among the insurers who are authorized to transact and are actually *transacting* the particular kind and class of insurance in this state and cannot obtain the full amount or kind of insurance from an authorized insurer.

(3) the insurance is not so procured for the purpose of securing advantages either as to:

(a) a lower premium rate than would be accepted by an authorized insurer; or

(b) terms of the insurance contract; and

(4) all other requirements of this part are met."

Section 2. Section 33-2-303, MCA, is amended to read:

**"33-2-303. Filing and endorsement of contract.** Every insurance contract, cover, note, or certificate of insurance procured and delivered as surplus lines insurance under this part *must* be filed with the commissioner, *or with the surplus lines advisory organization formed pursuant to 33-2-321,* and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under *surplus lines* agent license No. ....." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent". The surplus lines agent shall properly fill in and sign the endorsement."

Section 3. Section 33-2-305, MCA, is amended to read:

**"33-2-305. Licensing of surplus lines agent — fee and bond.** (1) *A person* may not procure a contract of surplus lines insurance with an unauthorized insurer unless *he* is licensed as a resident property, casualty, and surety insurance agent and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines *insurance* license to any qualified holder of a current property, casualty, and surety insurance agent license only if the *insurance* agent has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property, casualty, and surety insurance agent continuously for 5 years or more; and

(d) filed with the commissioner and thereafter for as long as the license remains in effect kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the *insurance* agent will conduct business under the license in accordance with the provisions of The Surplus Lines Insurance Law and that he will promptly remit the taxes provided *in 33-2-311.* The bond may not be terminated unless the

surety gives the surplus lines agent, the producing agent, and the commissioner at least 30 days' prior written notice thereof.

(3) The license expires on April 1 after its date of issue. A surplus lines agent shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines agent who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be *licensed as* a surplus lines agent if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines agents; and

(b) only those individuals listed on the corporate license transact surplus lines *insurance.*"

Section 4. Section 33-2-306, MCA, is amended to read:

"**33-2-306. Surplus lines agent's authority under license — acceptance of business from other insurance agents — placement fee.** (1) Under a surplus lines agent license the licensee may place surplus lines insurance, in compliance with The Surplus Lines Insurance Law, with *a* foreign or alien insurer not authorized to transact insurance in this state and *may* act as *a surplus lines* agent in this state for *the* insurer.

(2) The surplus lines agent may accept surplus lines insurance from *a* licensed *insurance* agent of an authorized insurer *[or, if the commissioner agrees in advance, through an individual, partnership, or corporation that has not been appointed as an insurance agent in this state]* and may compensate him therefor.

(3) A surplus lines agent who places or renews surplus lines insurance in accordance with subsection (1) may collect:

*(a) an inspection fee for the actual costs of inspecting the risk to be covered; and*

*(b)* a placement fee of 0.5% of the premium charged to cover the costs of issuing and servicing the policy. The fee may not be less than $10 or more than $100."

Section 5. Section 33-2-308, MCA, is amended to read:

"**33-2-308. Evidence of the insurance — changes — penalty.** (1) Upon placing surplus lines insurance, the surplus lines agent shall promptly issue *or* deliver to the insured or the producing agent evidence of the insurance, consisting either of the policy as issued by the insurer or, if *the* policy is not then available, a cover note or certificate of insurance signed or countersigned by the agent. *The* cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If *a* direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each such insurer.

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(2) If after the issuance and delivery of any cover note or certificate there is *a* change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the *surplus lines* agent shall promptly issue *or* deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

(3) If a policy issued by the insurer is not available upon placement of the insurance and the *surplus lines* agent has issued and delivered a cover note or certificate as hereinabove provided, upon request therefor by the insured, the *surplus lines* agent shall as soon as reasonably possible procure from the insurer its policy evidencing *the* insurance and deliver *the* policy to the insured in replacement of the cover note or certificate theretofore issued.

(4) *A* surplus lines agent who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of *a* material change with respect to *the* insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) shall be guilty of a violation of this code and upon conviction shall be subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines agent may not issue or deliver *an* evidence of insurance or purport to insure or represent that insurance will be or has been written by *an* eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that *the* insurance has been granted."

Section 6. Section 33-2-309, MCA, is amended to read:

**"33-2-309. Liability of insurer as to losses and unearned premiums.** (1) As to a surplus lines risk which has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the premium thereon has been received by the surplus lines agent who placed *the* insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer *is considered* to have received the premium due to it for *the* coverage. The insurer *is* liable to the insured as to losses covered by *the* insurance and for unearned premiums which may become payable to the insured upon cancellation of *the* insurance, whether or not in fact the *surplus lines* agent is indebted to the insurer with respect to *the* insurance or for any other cause. This provision *does* not affect rights as between the insurer and the surplus lines agent.

(2) A payment of premium to a surplus lines agent acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered thereby to have subjected itself to the terms of this section."

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Section 7. Section 33-2-310, MCA, is amended to read:

**"33-2-310. Records and annual statement — affidavit.** (1) Each surplus lines agent shall keep a separate record and account of all business transacted under his license, including a copy of each daily report, if any, *or* of each policy, certificate of insurance, cover note, or other evidence of insurance issued *or delivered* by him. The records must be available for examination by the commissioner at any reasonable time within 5 years after the issuance of the surplus lines insurance to which it relates.

(2) Prior to April 1 of each year the *surplus lines* agent shall file with the commissioner a statement for the *preceding* calendar year, showing:

(a) name and address of each insured for whom surplus lines insurance was procured;

(b) name and home office address of each insurer providing the surplus lines insurance;

(c) amount of each surplus lines insurance policy, the premium rate, and the gross premium charged *for the policy*;

(d) date and term of the policy;

(e) amount of premium returned on each policy canceled or not taken;

(f) amount of tax and other sums to be collected from the insured;

(g) identity of the producing agent; *and*

*(h)* such additional information as the commissioner may reasonably require.

(3) Each producing agent shall execute and each surplus lines agent shall file an affidavit, on a standardized form furnished by the commissioner, as to the diligent efforts to place the coverage with authorized insurers and the results of such efforts. An affidavit filed under this subsection is subject to public inspection unless the commissioner determines that the public interest requires otherwise. The producing agent shall state in the affidavit that he has expressly advised the insured prior to placing the insurance that:

(a) the surplus lines insurer with whom the insurance is placed is not authorized in this state and is not subject to the same supervision as an authorized insurer; and

(b) in the event of the insolvency of the surplus lines insurer, the property and casualty guaranty fund of the state will not pay losses under the surplus lines coverage."

Section 8. Section 33-2-312, MCA, is amended to read:

**"33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee.** *(1) A* surplus lines agent who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any

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court of competent jurisdiction, the attorney general representing him. The penalty when collected, unless collected by a justice's court, shall be paid to the state treasurer and placed to the credit of the general fund. The surplus lines agent license is also subject to revocation as provided in 33-2-313.

*(2) If a surplus lines agent does not pay the stamping fee provided for in 33-2-321 before it is due, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."*

Section 9. Section 33-2-316, MCA, is amended to read:

**"33-2-316. Rules.** (1) The commissioner shall make reasonable rules, consistent with this part, for any of the following purposes:

(a) effectuation of The Surplus Lines Insurance Law;

(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

(c) establishment, procedures, and operations of *the surplus lines advisory* organization *formed pursuant to 33-2-321* or others designed to assist *a surplus lines agent* to comply with *The Surplus Lines Insurance Law.*

(2) *The* rules *adopted pursuant to subsection (1) are* subject to the procedures and carry the penalty provided by 33-1-313."

Section 10. Section 33-2-317, MCA, is amended to read:

**"33-2-317. Exemptions.** The *Surplus Lines Insurance Law* does not apply to reinsurance or to the following *kinds of insurance* when placed by a licensed insurance agent of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, resident, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of such aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of such aircraft."

Section 11. Section 33-2-321, MCA, is amended to read:

**"33-2-321. Surplus lines advisory organizations — examination by commissioner — stamping fee.** (1) A surplus lines advisory organization of surplus lines agents may be formed to:

(a) facilitate and encourage compliance by its members with the laws of this state and the rules of the commissioner relative to surplus lines insurance;

(b) provide means for the confidential examination of all surplus lines insurance written by its members to determine whether *the surplus lines* insurance complies with this part;

(c) communicate with organizations of authorized insurers with respect to the proper use of the surplus lines *insurance* market; and

(d) receive and disseminate to its members information relative to surplus lines insurance.

(2) *The surplus lines* advisory organization shall file with the commissioner:

(a) a copy of its constitution, its articles of agreement or association, or its certificate of incorporation;

(b) a copy of its bylaws, rules, and regulations governing its activities;

(c) a current list of its members;

(d) the name and address of a resident of this state upon whom notices or orders of the commissioner or processes issued at his direction may be served; and

(e) an agreement that the commissioner may examine the advisory organization under the provisions of subsection (3).

(3) The commissioner may make or cause to be made an examination of *the surplus lines* advisory organization. The *surplus lines advisory organization shall pay the* reasonable cost of an examination upon presentation to it by the commissioner of a detailed account of *the* cost. The officers, managers, agents, and employees of the *surplus lines* advisory organization may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation. The commissioner shall furnish two copies of the examination report to the examined *surplus lines* advisory organization and shall notify the *surplus lines advisory* organization that it may, within 20 days of receipt of the report, request a hearing on the report or on any facts or recommendations contained in it. If the commissioner finds the *surplus lines* advisory organization or any of its members to be in violation of this part, he may issue an order requiring the discontinuance of the violation.

(4) The commissioner may by order compel a surplus lines agent to join *the surplus lines* advisory organization as a condition of continued licensure under this part.

*(5) The surplus lines advisory organization may collect a stamping fee not to exceed 1% of the premium payable for surplus lines insurance transacted by its members in this state. The commissioner shall establish the stamping fee by rule. The surplus lines advisory organization shall use the stamping fees it collects to pay its expenses.*"

Section 12. Section 33-17-201, MCA, is amended to read:

"**33-17-201. (Temporary) License required of agents, managing general agents, and solicitors — forms.** (1) No person shall in this state act as or hold himself out to be an agent or solicitor as to subjects

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of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold a validated appointment or license as agent under this chapter, except as provided *in 33-2-306,* in 33-17-1104 as to life or disability insurance agents, *or* in 33-8-213.

(5) The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

(7) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose. **(Terminates July 1, 1989—sec. 22, Ch. 11, Sp. L. March 1986.)**

**33-17-201. (Effective July 1, 1989) License required of agents, managing general agents, and solicitors — forms.** (1) No person shall in this state act as or hold himself out to be an agent or solicitor as to subjects of insurance located, resident, or to be performed in this state unless then licensed as such agent or solicitor under this chapter.

(2) No person may act or hold himself out in this state to be a managing general agent unless licensed as an insurance agent under this chapter and appointed by the insurers represented.

(3) No agent or solicitor shall solicit or take application for, procure, or place for others any kind of insurance as to which he is not then licensed.

(4) No agent shall place any business, other than coverage of his own risks, with any insurer as to which he does not then hold a validated appointment or license as agent under this chapter, except as provided *in 33-2-306 or* in 33-17-1104 as to life or disability insurance agents.

(5) The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, or termination of licenses and appointments.

(6) Unless licensed as a life insurance agent as required by this section, no person shall in this state solicit life insurance or annuities or procure applications therefor or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to such insurance or annuities for fee, commission, or other compensation, other than as a salaried bona fide full-time employee so counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of such employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of such employees.

(7) A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose."

Section 13. Section 33-17-202, MCA, is amended to read:

**"33-17-202. General qualifications of agents and solicitors.** (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent or solicitor license as to insurance, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) must be 18 years of age or more;

(b) must be a resident in and of this state or of another state if by reciprocal arrangements made by the commissioner with the other state similar privileges therein are granted to residents of this state;

(c) *except as provided in 33-2-306,* must have been appointed as agent by an authorized insurer, subject to issuance of the license;

(d) if for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation;

(e) must be competent, trustworthy, and of good reputation;

(f) must have had experience or training or be otherwise qualified in the kind or kinds of insurance as to which he is to be licensed and be reasonably familiar with the provisions of this code which govern his operations as an insurance agent or solicitor;

(g) must pass an examination for the license required under this chapter;

(h) if for an agent's license as to life or disability insurance, must not be a funeral director, undertaker, or mortician operating in this or any other state or an officer, employee, or representative thereof or hold an interest in or benefit from such a business in this or any other state.

(2) In determining the qualifications as to competence, training, experience, and knowledge of the provisions of this code governing his operations

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as an agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests, and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee."

Section 14. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 15. **Coordination instruction.** If House Bill No. 734 is passed and approved and if it amends 33-17-201 and 33-17-202, then the amendments to 33-17-201 and 33-17-202 and the bracketed amendment to 33-2-306 in [this act] are void.

Section 16. **Applicability.** [Sections 1 through 13] apply to each policy of surplus lines insurance transacted in this state after October 1, 1989.

Approved March 23, 1989.

# CHAPTER NO. 286

[SB 16]

AN ACT TO REQUIRE THE FILING OF A COPY OF MORTGAGE SATISFACTION BY A PERSON CLAIMING THE BENEFIT OF SECTION 15-16-402, MCA, CONCERNING THE LIEN OF PERSONAL PROPERTY TAXES AGAINST REAL PROPERTY; AMENDING SECTION 15-16-402, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-16-402, MCA, is amended to read:

**"15-16-402. Tax on personal property lien on realty — separate assessment — filing of mortgage satisfaction.** (1) Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof on and after January 1 of each year.

(2) The taxes upon personal property based upon a taxable value up to and including $1,000 shall be a first and prior lien upon the real property of the owner of such personal property. Taxes upon personal property based upon the taxable value thereof in excess of $1,000 shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and recorder of the county where such real property is situated, at or before the time such personal property tax attached

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thereto, shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of $1,000 of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including $1,000. Personal property taxes upon a taxable value up to $1,000 may be paid, redeemed from a tax sale as by law provided, or discharged separately from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to $1,000, as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving:

(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount thereof; and

(f) a statement that he claims the benefit of the provisions of this section.

(4) Such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually unless the mortgage be extended for a definite period to be stated in such notice.

(5) Any owner of a mortgage on real estate upon which personal property taxes are by this section made a lien, where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for 1 or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered or certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department or its agent of such request, it is hereby made the duty of the department or its agent to make a separate assessment of real and personal property of the owner thereof, and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof, and the personal property taxes shall be collected in the manner provided by law for other personal property.

*(6) The holder of a mortgage or lien upon real property who files a certificate of satisfaction and the proof and acknowledgment thereof, as provided for in 71-1-211, shall file a copy of the certificate and the proof and acknowledgment with:*

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*(a) the county treasurer if the holder has filed a notice under subsection (3); and*

*(b) the department of revenue or its agent in the county in which the real property is located if the holder has filed a written request under subsection (5).*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Applicability.** [This act] applies to notices and written requests filed under the provisions of 15-16-402 after September 30, 1989.

Approved March 24, 1989.

# CHAPTER NO. 287

[SB 22]

AN ACT TO EXPEDITE THE DETERMINATION OF CHILD SUPPORT OBLIGATIONS FOR INTERSTATE CASES BY ESTABLISHING A CENTRAL CASE CLEARINGHOUSE AND AN ADMINISTRATIVE RESOLUTION PROCESS; TO PROVIDE FOR COOPERATIVE AGREEMENTS TO COLLECT CHILD SUPPORT; AND AMENDING SECTION 40-5-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-5-201, MCA, is amended to read:

"**40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) "Department" means the department of revenue.

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or

retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(10) "Support debt" or "support obligation" means:

(a) the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support; or

(b) the sum created by a decree or order of any court of appropriate jurisdiction ordering a sum to be paid as spousal maintenance under chapter 4, part 2, of this title when the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

*(11) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."*

Section 2. **Central clearinghouse — interstate enforcement services — powers and duties of the department.** (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this

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state, the department may establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or his designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter.

Section 3. **Cooperative agreements.** (1) The department may enter into cooperative agreements with any person, firm, corporation, association, political subdivision, or department of this state as a cooperating contractor to provide enforcement services.

(2) A cooperating contractor:

(a) shall act as an independent support enforcement contractor if the cooperating contractor provides enforcement services; and

(b) may pursue any remedy available to the department, as limited by the terms of the cooperative agreement.

(3) The department may refer an enforcement case to a cooperating contractor in the county where the obligor resides.

Section 4. **Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 2 and 3].

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 24, 1989.

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# CHAPTER NO. 288

[SB 43]

AN ACT REVISING THE ITINERANT MERCHANT'S LICENSE FEE; DEFINING TEMPORARY LOCATION; PROVIDING AN EXEMPTION FROM THE BOND REQUIREMENT; REQUIRING THE LICENSEE TO DISPLAY THE LICENSE; AMENDING SECTIONS 80-3-701, 80-3-704 THROUGH 80-3-706, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-3-701, MCA, is amended to read:

**"80-3-701. Definitions.** For the purpose of this part, the following definitions apply:

(1) "Itinerant merchant" means a person who buys, offers to buy, sells, or offers to sell in this state *at a temporary location*, at wholesale or retail, any produce as defined by 80-3-601, who does not hold a license under the provisions of part 6 of this chapter and transports the produce in this state by use of a motor vehicle or by any other method of transportation, except as otherwise provided, or who has not secured a permit of exemption. The term "itinerant merchant" does not include the following:

(a) a person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises when the entire course of the transportation extends not more than 150 miles from his residence, whether the residence is within or outside this state;

(b) a person handling produce grown by him who has secured from the department of agriculture, before offering the produce for sale, a permit of exemption. The permit shall be issued by the department upon application and payment of a fee of $20. The applicant must first be able to satisfactorily show that he will sell or offer for sale only produce of his own production. The permit shall allow only the sale of produce of his own production and is forfeited if the holder sells or offers to sell any produce not of his own production.

(c) a person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when the transportation is incident to a business conducted by him at an established place of business operated by him, either within or outside this state, and when the property is being transported to or from an established place of business operated by him in this state;

(d) a person transporting property for his own consumption or use and not for sale.

(2) "Established place of business" means a permanent warehouse, building, or structure in which a permanent business is carried on in good faith and not for the purpose of evading this part and in which stocks of

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the property being transported are produced, stored, or kept in quantities reasonably adequate for and usually carried for the requirements of the business and which is recognized, licensed, and taxed as a permanent business at the place. The term does not mean residences, tents, temporary stands or other temporary quarters, a railway car, or permanent quarters occupied under a temporary arrangement.

*(3) "Temporary location" means any motor vehicle, building or part of any building, trailer or trailer house, or public or quasi-public place temporarily occupied for business as described in subsection (1)."*

Section 2. Section 80-3-704, MCA, is amended to read:

**"80-3-704. Application for license — fee.** (1) An application for a license to engage in business as an itinerant merchant shall be made to the department upon forms prepared by it.

(2) A separate application and license *are* required for *each temporary location*. The application shall contain those facts the department requires. The fee for each license is *$60* for the calendar year in which it is issued, and each license expires December 31 of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant."

Section 3. Section 80-3-705, MCA, is amended to read:

**"80-3-705. Surety bond.** *(1) Except as provided in subsection (2), a* license may not be issued until the applicant has filed a surety bond or its equivalent, as established by the department by rule, issued by a company authorized to do business in the state. The bond or its equivalent must first be approved by the department and *may not* be for less than $1,000. The bond or its equivalent *must* be in a form prescribed by the department and *must* be conditioned upon the delivery of honest weights, measures, or grades; accurate representation as to quality or class of produce; the actual payment of checks, drafts, or other obligations delivered by the itinerant merchant in exchange for the purchase of produce; and the payment of all other obligations incurred by him.

*(2) An itinerant merchant who has sold less than $2,000 of produce in the year immediately preceding his application or whose total inventory or projected cumulative inventory for the license year is less than $2,000 is exempt from the bond requirement."*

Section 4. Section 80-3-706, MCA, is amended to read:

**"80-3-706. License — issuance, form, and display.** Upon approval of the application and bond and upon compliance with this part, the department shall issue the applicant an itinerant merchant's license in a form prescribed by the department. The license shall at all times be carried by the driver of the motor vehicle described *or conspicuously posted at the temporary location* and is at all times subject to inspection by any person."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective July 1, 1989.

Approved March 24, 1989.

# CHAPTER NO. 289

[SB 51]

AN ACT TO STANDARDIZE THE FILING REQUIREMENTS FOR STATE WITHHOLDING STATEMENTS AND THE FILING REQUIREMENTS FOR INFORMATION AGENTS WITH THE REQUIREMENTS OF THE UNITED STATES INTERNAL REVENUE CODE; AMENDING SECTIONS 15-30-101, 15-30-204, 15-30-206, 15-30-207, AND 15-30-301, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-101, MCA, is amended to read:

**"15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by subsections (7) and (8) of 15-30-112, in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

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(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, *brokers, real estate brokers,* employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Purposely" is as defined in 45-2-101.

(14) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(15) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(16) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(17) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(18) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

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Section 2. Section 15-30-204, MCA, is amended to read:

"**15-30-204. Quarterly or weekly payment.** (1) Except as provided in subsection (3), on or before the last day of April, July, October, and January, every employer subject to the provisions of 15-30-202 and 15-30-203 shall file a return in such form and containing such information as may be required by the department and, except as provided in subsection (2), shall pay therewith the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding quarter. Quarterly returns for employers paying weekly shall be used to summarize and adjust payments and request refunds of overpayments.

(2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings equalled or exceeded $300,000 for the preceding calendar year shall remit a weekly payment to the department for the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid during the preceding week. The weekly payment must be submitted on or before the date on which federal income tax weekly withholding payments are due.

(3) If the total amount of the tax withheld by an employer under the provisions of 15-30-202 upon the wages of all employees of any employer is less than $10 in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in subsection (1), but in lieu thereof such employer shall, on or before February *28* of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the department and shall pay therewith the amount required to be deducted and withheld by the employer from all wages paid during the preceding calendar year.

(4) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income tax."

Section 3. Section 15-30-206, MCA, is amended to read:

"**15-30-206. Annual withholding statement.** Every employer shall, prior to *January 31* in each year, furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209. Said statement shall contain such additional information and shall be in such form as the department shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return."

Section 4. Section 15-30-207, MCA, is amended to read:

"**15-30-207. Annual statement by employer.** (1) Every employer shall, on or before February *28* in each year, file with the department a wage and tax statement for each employee in such form and summarizing such information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of

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15-30-301 relating to the duties of information agents, and no additional information return is required with respect to such wage payments.

(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of $5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be $50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts."

Section 5. Section 15-30-301, MCA, is amended to read:

"**15-30-301. Information agents' duties.** (1) Every information agent shall make return to the department of complete information concerning the following distributions made for any individual during the taxable year upon which no withholding tax has been deducted:

(a) sums in excess of $10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, *royalties,* and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code of 1965 or as that section may be amended;

(b) interest, other than that specified in subsection (1)(a) of this section, rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of $600, except interest coupons payable to the bearer.

(2) The return should be made under the regulations and in the form and manner prescribed by the department; provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Applicability.** [This act] applies to taxable years beginning after December 31, 1989.

Approved March 24, 1989.

# CHAPTER NO. 290

[SB 56]

AN ACT REVISING THE LANDOWNER ELK HUNTING PREFERENCE BY CLARIFYING THAT A LANDOWNER WHO IS GRANTED A SPECIAL ELK PERMIT IS NOT RESTRICTED TO HUNTING ONLY ON HIS OWN LAND; AMENDING SECTION 87-2-705, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-705, MCA, is amended to read:

"**87-2-705. Drawing for special elk permits.** (1) In the event the number of valid applications for special elk permits for a hunting district

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exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. The department shall provide for those persons making valid application for special elk permits a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to this section.

(2) Subject to the limitation of subsection (4), a person who holds fee title to 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where elk permits are awarded under this section shall be issued, upon application, a permit to hunt elk *in the hunting district under the terms and conditions of the permit.*

(3) An applicant who receives a permit under subsection (2) may designate that the permit be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (2) may designate one of its shareholders to receive the permit.

(4) Fifteen percent of the special elk permits available each year under this section in a hunting district must be available to landowners under subsection (2).

(5) The department may promulgate the rules necessary to implement this section."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1989.

# CHAPTER NO. 291

[SB 64]

AN ACT PROVIDING THAT THE NOTICE OF A RIGHT TO CLAIM A CONSTRUCTION LIEN FILED WITH THE CLERK AND RECORDER FOR THE PURPOSE OF PUBLIC NOTICE LAPSES AFTER 1 YEAR UNLESS A CONTINUATION OF THE NOTICE IS FILED; AND AMENDING SECTION 71-3-531, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-3-531, MCA, is amended to read:

**"71-3-531. Notice of right to claim a lien required — exceptions.** (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at his request;

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(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of his right to claim a lien to the contracting owner in order to claim a lien.

(3) This notice must be given no later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to him. Notice by certified mail is effective on the date the notice is mailed.

(5) *(a)* A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy must be filed no later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

*(b) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. Such notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.*

*(c) The continuation statement must include:*

*(i) the clerk and recorder's file number of the notice;*

*(ii) the date on which the notice originally was filed; and*

*(iii) the name of the person to whom the original notice was given.*

*(d) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time he files his lien.*

(6) At the request of any subcontractor or material supplier who may claim a lien through him, a person shall furnish to the requestor within 5 business days:

(a) a description of the real estate being improved, sufficient to identify it; and

(b) the name and address of the contracting owner."

Section 2. **Transition provision.** Notwithstanding [section 1], notice of a right to claim a lien that is filed with the clerk and recorder before October 1, 1989, lapses unless a continuation of the notice is filed before April 1, 1990.

Approved March 24, 1989.

# CHAPTER NO. 292

[SB 69]

AN ACT ALLOWING COUNTY CLERKS TO BILL THE STATE OR A POLITICAL SUBDIVISION IF AN ACCOUNT HAS BEEN ESTABLISHED PRIOR TO INITIATION OF MONTHLY BILLING; AND AMENDING SECTION 7-4-2631, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2631, MCA, is amended to read:

**"7-4-2631. Fees of county clerk.** (1) Except as provided in 7-4-2632, the county clerks must charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $2;

(d) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

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(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed under those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

(m) for each certified copy of a birth certificate or a death certificate, $2;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. *If a* state agency *or political subdivision has requested an account with the county clerk, any applicable fees must be paid* on a *periodic* basis."

Approved March 24, 1989.

# CHAPTER NO. 293

[SB 84]

AN ACT REQUIRING THE REGISTRATION OF SEXUAL OFFENDERS BY THE DEPARTMENT OF INSTITUTIONS AND LOCAL LAW ENFORCEMENT AGENCIES; PROVIDING THAT REGISTRATION CANNOT BE WAIVED IN IMPOSING SENTENCE; REQUIRING MANDATORY TREATMENT FOR SEXUAL OFFENDERS IMPRISONED IN THE STATE PRISON; RESTRICTING EMPLOYMENT OF PERSONS REQUIRED TO REGISTER; AMENDING SECTION 46-18-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 9] may be cited as the "Sexual Offender Registration Act".

Section 2. **Definitions.** As used in [sections 1 through 9], the following definitions apply:

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(1) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-505, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

Section 3. **Release of sexual offender — duties of court and department.** A sexual offender must be informed in writing at the time of sentencing of his duty to register under [sections 1 through 9] by the court in which he is sentenced. The department shall obtain the address where the person expects to reside upon release or discharge or suspension of his sentence. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

Section 4. **Release of sexual offender from place of confinement — duties of official in charge.** A sexual offender who is released from the custody of the department of institutions or the department of family services must be informed in writing prior to release of his duty to register under [sections 1 through 9] by the official in charge of the place of confinement. The official shall obtain the address where the person expects to reside upon his release and report the address to the department of institutions. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

Section 5. **Duty to register.** A sexual offender shall, within 14 days of coming into a county in which he resides or is temporarily domiciled, register, as required under [sections 1 through 9], with the chief of police of the municipality or the sheriff of the county if he resides in an area other than a municipality.

Section 6. **Change of address — duty to inform.** If a person required to register under [sections 1 through 9] changes his residence, he shall within 10 days give written notification of his new address to the law enforcement agency with whom he last registered. The law enforcement agency shall, within 3 days after receipt of such information, forward it to the department and the local law enforcement agency having local jurisdiction over the new place of residence.

Section 7. **Duration of registration.** (1) A person required to register under [sections 1 through 9] shall comply with [sections 1 through 9] for a period of 10 years after conviction, if not imprisoned during that period. If a person required to register under [sections 1 through 9] is imprisoned during the initial 10-year period, he shall comply with the provisions of [sections 1 through 9] for a period of 10 years after release from prison.

(2) A convicted sexual offender's duty to register under [sections 1 through 9] terminates at the expiration of 10 years from the date of initial

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registration, provided that during the 10-year period the convicted sexual offender does not again become subject to [sections 1 through 9].

Section 8. **Penalty.** A sexual offender who knowingly fails to register under [sections 1 through 9] may be sentenced to a term of imprisonment of not less than 90 days or a fine not to exceed $250, or both.

Section 9. **Sentence upon conviction — restriction on employment.** A judge sentencing a person upon conviction of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant.

Section 10. Section 46-18-201, MCA, is amended to read:

**"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment.

*(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in [section 2], the court may not waive the registration requirement provided in [sections 1 through 9].*

*(9) A person convicted of a sexual offense, as defined in [section 2], and sentenced to imprisonment in the state prison shall enroll in, the educational phase of the prison's sexual offender program."*

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in

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effect in all valid applications that are severable from the invalid applications.

Section 13. **Effective date.** [This act] is effective July 1, 1989.

Approved March 24, 1989.

# CHAPTER NO. 294

[SB 122]

AN ACT REVISING THE STATUTE OF LIMITATIONS FOR PROSECUTION OF CHILD SEXUAL ABUSE CRIMES; AMENDING SECTION 45-1-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for criminal homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the *victim reaches the age of 18* if the victim was less than *18* years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has

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a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(6) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Applicability.** [This act] applies:

(1) retroactively, within the meaning of 1-2-109, to offenses that occurred before [the effective date of this act] and for which the statute of limitations has not expired on [the effective date of this act]; and

(2) to offenses occurring after [the effective date of this act].

Approved March 24, 1989.

# CHAPTER NO. 295

[SB 229]

AN ACT CLARIFYING THE EXEMPTION OF CERTAIN PERSONS FROM THE PROHIBITION AGAINST DEBT ADJUSTING; AND AMENDING SECTION 31-3-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 31-3-203, MCA, is amended to read:

"**31-3-203. Exemptions.** Section 31-3-202 *does* not apply to:

(1) those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) banks and fiduciaries duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) title insurers and abstract companies, while doing an escrow business;

(4) judicial officers or others acting under court orders;

(5) nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) those situations involving debt adjusting incurred incidentally in connection with the lawful practice of a certified public accountant;

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(7) bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) employers for their employees;

(9) any person (other than a collection agency)*:*

*(a) who provides a bond in the amount of $10,000 to the department of commerce under which the person is the obligor and the bond is conditioned that the obligor shall apply all funds received and discharge all obligations for which the obligor has contracted; and*

*(b)* whose maximum fees *do not exceed:*

*(i) a processing and documentation fee of $75; and*

*(ii) for debt adjusting as defined in 31-3-201, 15% of the total amounts that are owed by the debtor and that are reduced in equal monthly portions over the life of a contract;*

(10) any person who, at the request of a debtor, arranges for or makes a loan to the debtor and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 24, 1989.

# CHAPTER NO. 296

[SB 237]

AN ACT ALLOWING A NONRESIDENT TO POSSESS A CLASS A-7 ANTLERLESS ELK LICENSE; REMOVING THE RESTRICTION THAT CLASS A-7 ANTLERLESS ELK LICENSES BE USED ONLY FOR SURPLUS ANTLERLESS ELK; AMENDING SECTION 87-2-501, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-501, MCA, is amended to read:

**"87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference.** (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, *or a nonresident who wishes to purchase a Class A-7 elk license only,* who will be 12 years of age or older prior to September 15 of the season for which the license is issued

may, upon payment of the proper fee or fees, be entitled to purchase one each of the following licenses at the prescribed cost which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, $9;

(b) Class A-4, deer B tag, $6;

(c) Class A-5, elk tag, $10;

(d) Class A-6, black or brown bear tag, $8;

(e) Class A-7, antlerless elk tag, $10.

(2) *(a)* The holder of a Class A-7 antlerless elk license is entitled to take antlerless elk in areas designated by the commission and at such times and upon such terms as set forth by the commission.

*(b)* No person may take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 *license or nonresident* elk tag. *The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.*

*(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.*

(3) Subject to the limitation of subsection (5), a person who holds fee title to 640 acres or more of contiguous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section shall be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders to receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective March 1, 1990.

Approved March 24, 1989.

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# CHAPTER NO. 297

[SB 387]

AN ACT GENERALLY REVISING THE LAW RELATING TO STORED AGRICULTURAL GOODS; ENTITLING A HOLDER OF A WAREHOUSE RECEIPT TO AN OFFICIAL INSPECTION AND CLASS X OR Y WEIGHTS; ALLOWING FOR A WRITTEN AGREEMENT MODIFYING OR SUPPLEMENTING A WAREHOUSE RECEIPT; PROVIDING THAT THE FEES FOR INSPECTION, TESTING, AND WEIGHING OF GRAIN BE DIVIDED EQUALLY BETWEEN THE WAREHOUSEMAN AND THE HOLDER OF A WAREHOUSE RECEIPT; AND AMENDING SECTIONS 80-4-531 AND 80-4-721, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 80-4-531, MCA, is amended to read:

**"80-4-531. Duty to deliver stored agricultural commodities — weights and inspections — modifying agreements — damages.** (1) The duty of the warehouseman to deliver agricultural commodities stored is governed by this part. Upon the return of a properly endorsed warehouse receipt to the warehouseman and upon payment or tender of all advances and legal charges, agricultural commodities of the grade and quantity named therein must be delivered to the holder of the warehouse receipt.

*(2) The holder of the warehouse receipt is entitled to an official inspection, as specified by the federal grain inspection service in the regulations implementing the United States Grain Standards Act. Inspections other than official must be agreed to in writing by the warehouseman and the holder of the warehouse receipt.*

*(3) (a) The holder of a warehouse receipt is entitled to class X or Y weights or better, as specified by the federal grain inspection service in the regulations implementing the United States Grain Standards Act.*

*(b) In the event an approved class X or Y weight is unavailable at the warehouse of origin, the following weights take precedence in this order:*

*(i) destination official or certified class X or Y or better; or*

*(ii) railroad track scale weights.*

*(4) The parties to a storage agreement are bound by an agreement made under this section and intended to supplement or modify the optional sections of the warehouse receipt if the agreement offer is made in writing and the receiving party fails to reject the offer in writing within 10 days of receipt of the written offer. In order to be valid, the agreement offer must state in boldface type that the receiving party has 10 days to reject the offer.*

*(5)* A warehouseman's duty to deliver any agricultural commodity is fulfilled if delivery is made pursuant to the contract with the depositor as

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rapidly as it can be done by ordinary diligence. When delivery is made within 48 hours from date of demand or as agreed upon in writing by all parties concerned, the delivery complies with the provisions of this section. An extension of the delivery period may be granted by the department upon written request.

*(6)* All redeliveries must be made at the warehouse or station where the agricultural commodity was received unless otherwise agreed.

*(7)* At the option of the depositor, the warehouseman shall deliver the agricultural commodity at a terminal or, if mutually agreed, shall pay to the depositor the equivalent market value of the agricultural commodity on that date, less any freight and storage charges to the terminal and less other charges which may be allowed by the department.

*(8)* In addition to other penalties provided, a warehouseman failing to deliver agricultural commodities within the time provided in this section is subject to suit by the person entitled to delivery of the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damages or liquidated damages of ½ of 1% of the value for each day's delay."

Section 2. Section 80-4-721, MCA, is amended to read:

**"80-4-721. Fees for inspection, testing, and weighing grain — disposition — investment.** (1) The department shall by rule fix the fees for inspection, testing, and weighing of grain.

(2) *Payment of the fees referred to in subsection (1) must be divided equally between the warehouseman and the holder of the warehouse receipt.*

*(3)* Those fees or proceeds are a lien upon the grain until paid.

*(4)* All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of grain, shall reflect as nearly as possible the actual cost of the services.

*(5)* All those fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the state special revenue fund may be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of grain.

*(6)* The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments must be credited to the proper department account in the state special revenue fund."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 24, 1989.

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# CHAPTER NO. 298

[HB 118]

AN ACT REVISING THE LAW ON THE PRACTICE OF FUNERAL DIRECTING AND MORTUARY SCIENCE; AUTHORIZING ADMINISTRATIVE FINES; CLARIFYING THE TERM OF MORTUARY LICENSES; PROVIDING FOR MANDATORY INITIAL FACILITY INSPECTIONS; AUTHORIZING INSPECTION AND RENEWAL FEES; AMENDING SECTIONS 37-19-101, 37-19-311, AND 37-19-401 THROUGH 37-19-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants authority to the board of morticians to adopt rules for:

(1) the imposition of fines in disciplinary actions for unprofessional conduct. Fines may be levied for any conduct for which a mortician's or funeral director's license could be revoked or suspended.

(2) the setting of standards for operating mortuary facilities to assure adherence to sanitary and safety provisions;

(3) the collection of fees and charges for mortuaries, which fees or charges must be commensurate with costs incurred for the services; and

(4) the establishment of reasonable application forms for operation of a new mortuary and transfer fees required to allow the transfer of a license to a new facility.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-19-101, MCA, is amended to read:

**"37-19-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of morticians provided for in 2-15-1853.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

(4) "Funeral directing" includes:

(a) supervising funerals, *including the making of preneed or at-need contractual arrangements for funerals*;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

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(d) the holding out to the public that one is a funeral director or undertaker.

(5) "Mortuary science" is the profession or practice of funeral directing and embalming.

(6) A "mortician" is a person licensed under this chapter to practice mortuary science.

(7) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing."

Section 2. Section 37-19-311, MCA, is amended to read:

**"37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license — fine.** *(1)* The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

*(a)* if the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license or in passing the examination;

*(b)* if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

*(c)* if the licensee has participated in any scheme in the nature of a burial association or burial certificate plan:

*(i)* which does not properly protect the rights of the public;

*(ii)* where there is any element of fraud; or

*(iii)* where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral or the freedom of choice as to which funeral directors or morticians shall be employed; *or*

*(d)* if the applicant or licensee violates rules adopted by the board which define unprofessional conduct on the part of applicants and licensees.

*(2) The board may impose an administrative fine of not more than $1,000 per incident for any violation that could result in the suspension or revocation of a mortician's or funeral director's license. Any fine collected must be deposited in the state general fund."*

Section 3. Section 37-19-401, MCA, is amended to read:

**"37-19-401. License required — display of license — renewal — penalty for late renewal.** *(1)* An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

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*(2) A mortuary license expires on June 30 of each year and may be renewed upon payment of a fee set by the board.*

*(3) The board may set a penalty for late renewal of a mortuary license."*

Section 4. Section 37-19-402, MCA, is amended to read:

**"37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility.** *(1)* The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

*(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.*

*(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.*

*(b) The department shall inspect the proposed new mortuary and report its findings to the board.*

*(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be operated by a person who has been issued a mortician's or a funeral director's license.*

*(5) The board may grant a temporary license to a mortuary until the initial inspection is completed.*

*(6) A mortuary license may be transferred from one facility to another only when the proprietor of a licensed facility terminates services at the licensed facility and commences services at a new facility. The new facility must be inspected and must meet standards for operating mortuaries.*

*(7) A mortuary may be inspected by members of the board or their representatives during business hours."*

Section 5. Section 37-19-403, MCA, is amended to read:

**"37-19-403. Power of board to set facility standards — inspection — fees.** (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments. *The board* may inspect the premises of a mortuary establishment to determine if rules are complied with. *Inspections are* at the discretion of the board and may be without notice. *An initial inspection is mandatory.*

(2) The board may charge the operator an inspection fee, *including an initial inspection fee,* to be set at the discretion of the board. *Fees must be commensurate with costs."*

Section 6. Section 37-19-404, MCA, is amended to read:

**"37-19-404. Suspension, revocation of mortuary license.** A mortuary license may be suspended or revoked upon proof of:

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(1) noncompliance of board rules relating to the operation of mortuaries;

(2) violation of any of the laws or rules of the state, district, or local board of health governing the disposition of dead human bodies;

(3) violation of any rule of the board regulating the practice of mortuary science and funeral directing; *or*

*(4) nonpayment of renewal fees.*"

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1989.

# CHAPTER NO. 299

[HB 172]

AN ACT MAKING IT CRIMINAL ENDANGERMENT TO KNOWINGLY PLACE IN A TREE, LOG, OR ANY OTHER WOOD A SUBSTANCE FOR THE PURPOSE OF DAMAGING A SAW OR OTHER WOOD HARVESTING, PROCESSING, OR MANUFACTURING EQUIPMENT; AND AMENDING SECTION 45-5-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-207, MCA, is amended to read:

"**45-5-207. Criminal endangerment — penalty.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. *This conduct includes, but is not limited to, knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or othe. wood harvesting, processing, or manufacturing equipment.*

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

Approved March 24, 1989.

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# CHAPTER NO. 300

[HB 201]

AN ACT PROVIDING THAT A CITY JUDGE MUST BE A RESIDENT OF THE COUNTY IN WHICH THE CITY OR TOWN IS LOCATED; ESTABLISHING THE REQUIREMENTS FOR APPOINTMENT OF CITY JUDGES IN A TOWN OR THIRD-CLASS CITY; AUTHORIZING THE APPOINTMENT OF A JUSTICE OF THE PEACE OR THE CITY JUDGE OF ANOTHER CITY OR TOWN WHO RESIDES IN THE SAME COUNTY AS CITY JUDGE; AND AMENDING SECTIONS 3-11-202, 3-11-205, 7-4-4102, AND 7-4-4103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-11-202, MCA, is amended to read:

**"3-11-202. Salary — qualifications.** (1) A city judge, at the time of election or appointment, shall:

*(a)* meet the qualifications of a justice of the peace under 3-10-202;

*(b) be a resident of the county in which the city or town is located;* and

*(c) satisfy* any additional qualifications prescribed by ordinance.

(2) The annual salary and compensation of city judges must be fixed by ordinance or resolution.

(3) Each city judge shall receive his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 2. Section 3-11-205, MCA, is amended to read:

**"3-11-205. Justice of the peace or judge of another city as city judge.** (1) In a town or third-class city, the council may designate a justice of the *peace or the city judge of another city or town to act as city judge. The justice of the peace or city judge shall reside in the* county in which the town or city is situated. *The city or town* may by ordinance fix the funding for such *judge* and enter into an agreement with the county, *the other city or town, or the justice of the peace or the judge* for payment of salaries and training expenses. The justice *of the peace or other city judge* shall, *after agreeing* to the designation and *after* approval by the board of county commissioners *or governing body of the city or town*, act in that capacity and shall be the city *judge* in all cases arising out of violations of statutes or ordinances. If the justice of the peace *or city judge of another city or town* must travel from his place of residence to hold court, he shall be paid his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, by the town or city in which the court is held.

(2) The offices of city judge and justice of the peace may be combined if a justice of the peace is authorized in a city pursuant to 3-10-101."

Section 3. Section 7-4-4102, MCA, is amended to read:

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**"7-4-4102. Officers of city of second or third class.** (1) The officers of a city of the second or third class consist of:

(a) one mayor;

(b) two aldermen from each ward;

(c) one city judge.

(2) The officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city as hereinafter provided.

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge shall be filled by appointment by the governing body or by election or may *appoint a justice of the peace or the city judge of another city as judge of the* city court as provided in 3-11-205.

(4) There may also be appointed by the mayor, with the advice and consent of the council:

(a) one city attorney;

(b) one city clerk, who is ex officio city assessor;

(c) one city treasurer or one city clerk-treasurer;

(d) one chief of police; and

(e) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation."

Section 4. Section 7-4-4103, MCA, is amended to read:

**"7-4-4103. Officers of towns.** (1) The officers of a town consist of:

(a) one mayor;

(b) two aldermen from each ward; and

(c) one city judge.

(2) The officers listed in subsection (1), except for the city judge, must be elected by the qualified electors of the town, as hereinafter provided.

(3) The governing body of the town may by ordinance determine that the office of city judge must be filled either by election or appointment or may *appoint a justice of the peace or the city judge of another city to be judge of the* city court as provided in 3-11-205.

(4) There may be appointed by the mayor, with the advice and consent of the council:

(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;

(b) one marshal, who may be ex officio street commissioner; and

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(c) any other officers necessary to carry out the provisions of this title.

(5) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title."

Approved March 24, 1989.

# CHAPTER NO. 301

[HB 248]

AN ACT TO CLARIFY THE LAWS RELATING TO THE EXEMPTION OF WAGES AND RETIREMENT BENEFITS; TO INCLUDE RETIREMENT BENEFITS IN THE PROPERTY AN INDIVIDUAL MAY EXEMPT IN A BANKRUPTCY PROCEEDING; AMENDING SECTIONS 25-13-614 AND 31-2-106, MCA; REPEALING SECTION 25-13-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 31-2-106, MCA, is amended to read:

**"31-2-106. Exempt property — bankruptcy proceeding.** No individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). *An individual may exempt from the property of the estate in any bankruptcy proceeding:*

*(1)* that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, Title 25, chapter 13, part 6, 33-7-511, 33-15-512 through 33-15-514, 35-10-502, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245*;*

*(2) the individual's right to receive unemployment compensation and unemployment benefits; and*

*(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy, which portion exceeds 15% of the individual's gross income for that 1-year period, unless:*

*(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;*

*(b) the benefit is paid on account of age or length of service; and*

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*(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409).*"

Section 2. Section 25-13-614, MCA, is amended to read:

"**25-13-614. Earnings of judgment debtor.** (1) *Earnings of a judgment debtor that are not subject to garnishment as provided in this section are exempt.*

(2) Except as provided in subsections (3) and (4), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(a) the amount by which his disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(b) 25% of his disposable earnings for that week.

(3) The restrictions of subsection (2) do not apply in the case of an order or judgment for the maintenance or support of any person, issued by a court of competent jurisdiction or pursuant to an administrative procedure that is established by state law, affords substantial due process, and is subject to judicial review.

(4) (a) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce an order described in subsection (3) may not exceed:

(i) 50% of the judgment debtor's disposable earnings for that week if he is supporting his spouse or dependent child (other than a spouse or child for whom the order is issued); or

(ii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child described in subsection (4)(a)(i).

(b) However, the amount stated in (4)(a)(i) may be 55% and the amount stated in (4)(a)(ii) may be 65% if such earnings are being garnished to enforce an order for maintenance or support for a period prior to the 12-week period that ends with the beginning of such workweek.

(5) For the purposes of this section, the definitions of earnings, disposable earnings, and garnishment are as set forth in 15 U.S.C. 1672."

Section 3. **Repealer.** Section 25-13-411, MCA, is repealed.

Section 4. **Effective date — applicability.** [This act] is effective on passage and approval and applies to bankruptcy petitions in which discharge takes place on or after [the effective date of this act].

Approved March 24, 1989.

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# CHAPTER NO. 302

[HB 249]

AN ACT CLARIFYING THE UNEMPLOYMENT INSURANCE TAX CONTRIBUTION APPEALS PROCESS; AMENDING SECTION 39-51-1109, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-1109, MCA, is amended to read:

"**39-51-1109. Tax appeals.** *A* decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, employment status, or the charging of benefit payments to employers making payment in lieu of contributions is final unless an interested party entitled to notice thereof applies for *an appeal to an appeals referee. The appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to hearings in the appeal.* The decision of the appeals referee and any appeal therefrom must be made in the same manner as prescribed in 39-51-2403 *through 39-51-2410.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Applicability.** [This act] applies to any decision, determination, or redetermination of the department of labor and industry on or after October 1, 1989, involving contribution liability, contribution rate, application for refund, employment status, or the charging of benefit payments to employers making payment in lieu of contributions.

Approved March 24, 1989.

# CHAPTER NO. 303

[HB 312]

AN ACT TO CLARIFY THE LAW RELATING TO MODIFICATION OF CHILD CUSTODY DECREES BY DEFINING "PRIOR CUSTODY DECREE" TO MEAN A JUDICIAL DETERMINATION OF CUSTODY; AND AMENDING SECTIONS 40-4-212 AND 40-4-219, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4-212, MCA, is amended to read:

"**40-4-212. Best interest of child.** *(1)* The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

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*(a)* the wishes of the child's parent or parents as to his custody;

*(b)* the wishes of the child as to his custodian;

*(c)* the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

*(d)* the child's adjustment to his home, school, and community;

*(e)* the mental and physical health of all individuals involved;

*(f)* physical abuse or threat of physical abuse by one parent against the other parent or the child; and

*(g)* chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

*(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219."*

Section 2. Section 40-4-219, MCA, is amended to read:

**"40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

*(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.*

*(3)* The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e).

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*(4)* The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

*(5)* Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

*(6)* A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

*(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding."*

Approved March 24, 1989.

# CHAPTER NO. 304

[HB 321]

AN ACT REQUIRING UNIFORM COMMERCIAL CODE FINANCING STATEMENTS TO INCLUDE THE SOCIAL SECURITY NUMBER OR TAX IDENTIFICATION NUMBER OF THE DEBTOR; AND AMENDING SECTION 30-9-402, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-9-402, MCA, is amended to read:

**"30-9-402. Formal requisites of financing statement — amendments — mortgage as financing statement.** (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address and the county of residence of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to 30-9-409 when the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or when the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) .....

*Social security number or tax identification number* .....

Address .....

County of residence .....

Name of secured party (or assignee) .....

Address .....

1. This financing statement covers the following types (or items) of property:

(Describe) .....

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) .....

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate) .....
and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is .....

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever is applicable) Signature of Debtor (or Assignor) .....
Signature of Secured Party (or Assignee) .....

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires,

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the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

(i) the goods are described in the mortgage by item or type;

(ii) the goods are or are to become fixtures related to the real estate described in the mortgage;

(iii) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(iv) the mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives *the social security number or tax identification number of the debtor and* the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes his name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

Approved March 24, 1989.

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# CHAPTER NO. 305

[HB 365]

AN ACT TO EXTEND TO ALL COUNTIES THE AUTHORITY FOR THE BOARD OF COUNTY COMMISSIONERS TO AWARD SEPARATE PRINTING CONTRACTS FOR PUBLICATIONS AND FOR PRINTED MATERIALS; AND AMENDING SECTION 7-5-2411, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-5-2411, MCA, is amended to read:

"**7-5-2411. County printing contract.** (1) *The* county commissioners shall contract *for* all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board. The *advertising required by law shall be awarded to a* newspaper that:

*(a)* is published in the county;

*(b) has* general bona fide and paid circulation with the second-class mailing privilege; and

*(c)* has been published continuously *for* at least once a week in the county for the 12 months preceding the awarding of the contract.

(2) (a) *The* county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only. *The legal advertising* contract *shall be* let to a legally qualified newspaper. *The* other contract shall provide for all printed forms, materials, and supplies required by the county.

(b) The contract for printed forms, materials, and supplies referred to in subsection (2)(a) or subsection (2)(c) shall be let:

(i) to a commercial printing establishment or establishments, as the case may be, which *has* been in business in the county for at least 1 year and whose competitive bid is not more than 5% higher than that of the lowest responsible commercial printing establishment bidder doing business outside the county; or

(ii) if no establishment qualifies under subsection (2)(b)(i), to the lowest responsible commercial printing establishment bidder.

(c) *Contracts* for printed forms, materials, and supplies may be awarded on an annual basis or may be awarded for a specific printing job.

(3) *A* contract *may not* call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms

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qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing."

Approved March 24, 1989.

## CHAPTER NO. 306

[HB 377]

AN ACT TO REQUIRE HEALTH CARE PROVIDERS TO POST A NOTICE INFORMING MEDICARE PATIENTS AS TO WHETHER OR NOT THEY ACCEPT PAYMENT FOR SERVICES BASED ON A MEDICARE ASSIGNMENT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Medicare assignments — notice required.** (1) A health care provider shall give notice to a medicare patient as to whether or not the provider accepts payment for services on the basis of an assignment, pursuant to section 1842(b)(3)(B)(ii) of the federal Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii)), the terms of which provide that the full charge for services is the amount of the medicare approved rate for payment of the applicable service plus any deductible, coinsurance, or copayment required to be paid by the patient.

(2) The notice required under subsection (1) must be posted by each health care provider in a conspicuous area in his place of business.

(3) For purposes of this section, "health care provider" means a person, firm, corporation, association, or institution that provides goods or services subject to reimbursement under the federal medicare program in accordance with Title XVIII of the federal Social Security Act (42 U.S.C. 1395, et seq.).

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 5, and the provisions of Title 53, chapter 5, apply to [section 1].

Approved March 24, 1989.

## CHAPTER NO. 307

[HB 385]

AN ACT TO DIRECT THE MONTANA DEPARTMENT OF HIGHWAYS TO TRANSFER CERTAIN LANDS TO YELLOWSTONE COUNTY, THE CITY OF BILLINGS, OR ZOOMONTANA, INC., TO MAKE THE LAND AVAILABLE FOR DEVELOPMENT OF A ZOO AND BOTANICAL GARDENS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Montana Department of Highways owns a parcel of land near Billings along Interstate 90 near the proposed Shiloh interchange for which the department has no need; and

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WHEREAS, Yellowstone County, the City of Billings, a private nonprofit corporation known as ZooMontana, Inc., and the Department desire to make the land available to ZooMontana, Inc. for use as a zoo and botanical gardens; and

WHEREAS, ZooMontana, Inc. plans to create a high-quality regional zoo and botanical gardens to fulfill educational, recreational, and research purposes and for the enjoyment of the public; and

WHEREAS, the zoo and botanical gardens will attract many visitors from the City of Billings, from around the State of Montana, and from out of state; and

WHEREAS, the zoo and botanical gardens will become a major tourist attraction and is expected to bring over 50,000 people into the zoo each year from out of the region who will spend in excess of one million each year, which will benefit the entire state; and

WHEREAS, funds for the construction of the facility are being raised locally and regionally, with an expectation that $4.5 million will be raised; and

WHEREAS, the ZooMontana development promises to be of major benefit to Montana in terms of educational and recreational opportunities while at the same time infusing money into the state's economy.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Disposition of certain highway property to Yellowstone County.** (1) The department of highways is directed to transfer its interest by sale, lease, trade, or whatever other legal means may be available so that the property described in subsection (2) may be made available to Yellowstone County, the city of Billings, or ZooMontana, Inc., a corporation, for the development of a zoo, botanical gardens, and related facilities.

(2) The property is described as the N ½ of the SE ¼, section 22, township 1 south, range 25 east, M.P.M., Yellowstone County, Montana, lying northwesterly of Canyon Creek ditch, containing 63.33 acres and including appurtenant water rights, less the easterly 20 feet abutting the right-of-way of Shiloh road.

(3) The department is authorized to provide an easement or otherwise make available to Yellowstone County, the city of Billings, or ZooMontana, Inc., land owned by the department that is contiguous to the land described in subsection (2) for the purpose of providing access to the land described in subsection (2). The additional grant or easement may be made if the department determines that use for access will not interfere with highway department use of the contiguous land.

(4) The department of highways may establish appropriate conditions to protect the interest of the state on the transfer of the property, including a provision for reversion should the property cease to be used for zoo and botanical garden purposes. The commitment to expend sums of money in the development of the property for use as a zoo and botanical gardens

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and the dedication of the property as so developed for public use for the benefit of all Montanans may be considered as a part or all of the consideration necessary to constitute full market value if it is determined that the state cannot transfer the property without obtaining full market value for it.

(5) The provisions of Title 60, chapter 4, part 2, do not apply to the transfer of land directed by [this act].

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1989.

# CHAPTER NO. 308

[HB 388]

AN ACT AUTHORIZING THE CREATION OF ROAD IMPROVEMENT DISTRICTS; PROVIDING FOR THE CREATION OF A DISTRICT UPON LANDOWNER PETITION TO THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR THE ADMINISTRATION OF THE DISTRICT; AND PROVIDING OPTIONS FOR THE ASSESSMENT OF BENEFITED LAND IN THE DISTRICT FOR IMPROVEMENTS MADE BY THE DISTRICT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Road improvement district — purpose — benefited property defined.** (1) The board of county commissioners may establish road improvement districts in those areas of the county that are not within the limits of an incorporated city or town.

(2) The purpose of a road improvement district is to allow a public entity to assess owners of parcels of land directly benefited by a proposed public road or a public road within the county that is not a county road or a highway to provide for the road's reconstruction, upgrade, repair, or maintenance. The county surveyor must determine that it would be physically impractical to improve the road to standard county road specifications.

(3) For the purposes of [this act], "benefited property" means land within the district that receives a direct benefit from the road for which the road improvement district was created. A parcel of land is not benefited property if the parcel is within the district solely because the road passes over the property to provide access to benefited property. A parcel of land within the district used solely for agricultural purposes is not considered benefited property.

Section 2. **Creation of road improvement district — resolutions — hearing.** (1) The board of county commissioners may establish a road improvement district upon petition of at least 60% of the landowners in the proposed district. The petition must:

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(a) describe the boundaries of the proposed district;

(b) describe the proposed improvement;

(c) estimate the total cost of the improvement and suggest the method of making landowner assessments;

(d) if the improvement is a service, such as snowplowing, estimate the length of time the service is to be provided; and

(e) describe the manner of providing the improvement, such as through contract with a private party or local government.

(2) To establish a road improvement district, the board shall:

(a) pass a resolution of intent to form the district. The notice of intent to form the district must:

(i) be posted at three places within the proposed district;

(ii) be published as provided in 7-1-2121;

(iii) be mailed as provided in 7-1-2122 to every person, firm, or corporation or to the agent of the person, firm, or corporation owning real property within the proposed district listed in the name of the person, firm, or corporation upon the last completed assessment roll for state, county, and school district taxes; and

(iv) specify the method or methods by which the costs of the improvements are assessed against property in the district;

(b) (i) hold a public hearing no earlier than 30 days or later than 90 days after passage of the resolution of intent;

(ii) accept written protests at the hearing from property owners of the proposed district; and

(iii) receive general protests and comments at the hearing relating to the establishment of the road improvement district and its boundaries, service levels, or any other matter relating to the proposed district; and

(c) pass a resolution creating the road improvement district. The district is created effective 60 days after passage of the resolution unless by that date the owners of property in the district to be assessed for more than 50% of the cost of the proposed work, in accordance with the method or methods of assessment described in the resolution of intention, protest its creation.

(3) Based on testimony received in the public hearing, the board in the resolution creating the road improvement district may establish different boundaries or change the manner in which the area will provide services to its residents. The board may change district boundaries only if all landowners affected by the change were given written notice of the public hearing as provided in subsection (2)(a)(iii).

(4) The board of county commissioners may alter the boundaries or dissolve a road improvement district, using the same procedures required for the creation of a road improvement district. Any existing indebtedness of

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a road improvement district that is dissolved remains the responsibility of the owners of benefited property within the district, and any assets remaining after all indebtedness has been satisfied must be returned to the owners of property within the district.

Section 3. **Authority to conduct improvements.** Upon petition of a majority of the landowners in a road improvement district, a board of county commissioners may authorize the reconstruction, upgrade, repair, maintenance, or other road improvement to be performed by the district. Before the board may authorize the improvement, notice must be mailed to the landowners of the road improvement district, as provided in 7-1-2122, and a public hearing must be held if one is requested in writing by any landowner in the district.

Section 4. **Cost of road improvement districts — property owner assessments.** (1) The cost of operating a road improvement district must be assessed upon all the benefited property in the district based upon the benefits received, and the board of county commissioners shall adopt one or any combination of the following methods of assessment for improvements made for the benefit of the district:

(a) Each parcel of benefited property assessed in such district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all the benefited parcels in the district, exclusive of roads and public places. For the purposes of this subsection (1)(a), "assessable area" means an area of a parcel of benefited property representing the benefit conferred upon the parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the parcel.

(b) Each parcel of benefited property assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited parcels of land within said district, if the board determines such assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the parcel.

(c) Each parcel of benefited property in the district abutting upon the road where the improvement has been made may be assessed in proportion to its lineal feet abutting the road.

(2) The board may use one or any combination of methods of assessment in a single road improvement district and, if more than one improvement is undertaken, need not assess each parcel of benefited property in the district for the cost of all the improvements.

(3) Not later than the first Monday in September of each year, the board of county commissioners shall adopt a resolution levying and assessing upon all the benefited property in the district an amount equal to the total amount necessary for district operations. The amount necessary for district operations is the total of:

(a) (i) the estimated amount for improvements as authorized in [section 3]; and

(ii) the amount necessary to pay for debts for authorized improvements that cost more than estimated in previous years;

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(b) less any amount in the road improvement district fund, as provided for in [section 5], that may be unspent, unencumbered, and available for district use.

(4) (a) It is the duty of the county treasurer to collect the assessments in the same manner and at the same time as taxes for general purposes are collected.

(b) When an assessment becomes delinquent, the unpaid amount becomes a lien on the assessed parcel of land. The collection of delinquent assessments or enforcement of a lien may be made by any method authorized by law for the collection or payment of taxes.

Section 5. **Improvement district maintenance fund.** The money collected from the assessment provided for in [section 4] must be paid into a road improvement district fund. Each road improvement district shall have a separate road improvement district fund. The fund may only be used to pay for expenses incurred by the district.

Approved March 24, 1989.

# CHAPTER NO. 309

[HB 438]

AN ACT TO PROHIBIT A HOSPITAL, EXCEPT A HOSPITAL THAT EMPLOYS ITS MEDICAL STAFF, FROM DENYING STAFF MEMBERSHIP OR PRIVILEGES TO OSTEOPATHS AND PODIATRISTS BECAUSE THEY ARE NOT MEDICAL DOCTORS; AND AMENDING SECTION 50-5-105, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-5-105, MCA, is amended to read:

"**50-5-105. Discrimination prohibited.** (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) No person who operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected.

*(3) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 5 or 6.*

*(4) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria.*"

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Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 24, 1989.

# CHAPTER NO. 310

[HB 453]

AN ACT REVISING ELIGIBILITY FOR THE MONTANA MEDICAID PROGRAM TO CONFORM WITH FEDERAL REQUIREMENTS FOR STATE MEDICAID PARTICIPATION; REMOVING THE AUTHORITY OF COUNTY WELFARE BOARDS TO REVIEW MEDICAID ELIGIBILITY DETERMINATIONS; AMENDING SECTIONS 53-6-113, 53-6-131, 53-6-133, AND 53-6-141, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because it amends 53-6-113 to authorize the department of social and rehabilitation services to adopt rules to govern eligibility for the Montana medicaid program.

It is the intent of the legislature that the department adopt rules for eligibility that comply with federal requirements under Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.) and 42 CFR 430 through 498. The rules of the department should address the standards of eligibility for the Montana medicaid program, including income and resource criteria, treatment of resources, specification of groups eligible to receive medicaid, and all other considerations described in 53-6-113(2) through (4).

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-6-131, MCA, is amended to read:

**"53-6-131. Eligibility requirements.** (1) Medical assistance *under the Montana medicaid program* may be granted to a person who *is determined by the department of social and rehabilitation services to be eligible as follows:*

*(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).*

*(b) The person would be eligible for assistance under a program described in subsection (1)(a) if he were to apply for such assistance.*

*(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, he would be receiving assistance under one of the programs in subsection (1)(a).*

*(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.*

*(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.*

*(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:*

*(i) the person's income does not exceed the medically needy income level specified for federally aided categories of assistance and his resources are within the resource standards of the federal supplemental security income program; or*

*(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance, has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance and his resources are within the resource standards of the federal supplemental security income program.*

*(g) The person is under 1 year of age and:*

*(i) has income that does not exceed income standards as may be required by the federal Social Security Act; and*

*(ii) has resources that do not exceed standards the department determines reasonable for purposes of the program.*

*(2) A person who is pregnant is eligible for pregnancy-related medical assistance under the Montana medicaid program if she:*

*(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and*

*(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.*

*(3) The Montana medicaid program shall pay for the premiums necessary for participation in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare deductibles and coinsurance for a medicare-eligible person who:*

*(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and*

*(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.*

*(4) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act*

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*(42 U.S.C. 1396 et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance."*

Section 2. Section 53-6-133, MCA, is amended to read:

**"53-6-133. Investigation and determination of eligibility.** (1) The county department shall promptly investigate and determine the eligibility of each applicant under this part in accordance with the rules of the department of social and rehabilitation services. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this part, and aid shall be furnished promptly to eligible persons. Each applicant shall receive written notice of the decision concerning his application, and right of appeal shall be secured to the applicant under the procedures of 53-2-606.

(2) The county departments of public welfare and the department of social and rehabilitation services are hereby authorized to accept the federal social security administration's determination of eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying such eligible individuals to receive medical assistance under this part."

Section 3. Section 53-6-141, MCA, is amended to read:

**"53-6-141. Amount, scope, and duration of assistance.** (1) The amount, scope, and duration of medical assistance granted eligible persons shall be determined by the department of social and rehabilitation services. Payments on behalf of persons in state-operated institutions shall be made only from funds appropriated specifically for this purpose, as such funds are available.

(2) If available funds are not sufficient to provide medical care for all eligible persons, the department shall have the authority to set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical care and services made available."

Section 4. Section 53-6-113, MCA, is amended to read:

**"53-6-113. Department to adopt rules.** *(1)* The department of social and rehabilitation services shall adopt appropriate rules not inconsistent with this part to administer and supervise the program uniformly throughout the state and shall define medical assistance by rules. Medical assistance shall be furnished through payments to providers of services and supplies as contemplated in this part.

*(2) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, and confidentiality of applicant and recipient information.*

*(3) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be*

*amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons."*

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective dates.** (1) [Sections 4 and 5 and this section] are effective on passage and approval.

(2) [Sections 1 through 3] are effective July 1, 1989.

Approved March 24, 1989.

# CHAPTER NO. 311

[HB 467]

AN ACT TO CLARIFY CERTAIN QUALIFICATIONS FOR SCHOOL BUS DRIVERS; AMENDING SECTION 20-10-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-10-103, MCA, is amended to read:

**"20-10-103. School bus driver qualifications.** Any driver of a school bus *is* qualified to drive *a* school bus by compliance with the following requirements:

(1) he is not less than 18 years of age;

(2) he is of good moral character;

(3) he is the holder of a driver's license with a commercial vehicle operator's endorsement;

(4) he has filed with the district a satisfactory medical examination report, on a *form approved by the United States department of transportation or* by the superintendent of public instruction, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) he has completed a *basic* first aid course and holds a valid *basic* first aid certificate from an authorized instructor. The issuance of *the* certificate *is* governed by rules established by the superintendent of public instruction, provided that *the* rules may suspend this requirement for a reasonable period of time *if* there has been an inadequate opportunity for securing the *basic* first aid course and certificate.

(6) he has complied with any other qualifications established by the board of public education; and

(7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven, certifying

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compliance with the several driver qualifications enumerated in this section."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved March 24, 1989.

# CHAPTER NO. 312

[HB 482]

AN ACT TO ALLOW THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO DELEGATE REVIEW POWERS TO QUALIFIED LOCAL GOVERNMENTS FOR SMALL PUBLIC WATER AND SEWER PROJECTS; TO ALLOW THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES RELATING TO THE DELEGATION OF REVIEW; AND AMENDING SECTION 75-6-102, MCA.

STATEMENT OF INTENT

A statement of intent is required for [this act] because section 1(2) grants rulemaking authority to the board of health and environmental sciences. The board would adopt rules governing the delegation to local governments of review of small public water systems and extensions or alterations of existing public water and sewer systems.

The rules are intended to establish criteria that would be used to determine whether a division of a local government has a review program suitable for delegation of review. The rules would specify the acceptable level of expertise and other factors necessary for local review and, if review authority has been granted, the circumstances under which the authority should be terminated or reviewed.

The rules are also intended to address the size of public water and sewer systems that would be subject to local review.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Delegation of review of small public water and sewer construction.** (1) If a local government requests a delegation and the appropriate division of the local government has established satisfactory review programs, the department may delegate to the division of local government review of:

(a) small public water and sewer systems; and

(b) extensions or alterations of existing public water and sewer systems that involve 50 or fewer connections.

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(2) The board may adopt rules regarding the delegation of review authority to divisions of local government.

Section 2. Section 75-6-102, MCA, is amended to read:

**"75-6-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Drainage" means rainfall, surface, and subsoil water.

(5) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource, together with any sewage that may be present.

(6) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to any user of a public water supply system.

(7) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(8) "Person" means any individual, corporation, association, partnership, municipality, other political subdivision of the state, or federal agency.

(9) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

*(10) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 10 or more families or 25 or more persons daily for a period of at least 60 days out of the calendar year.*

*(11)* "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that

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serves 10 or more families or 25 or more persons daily or has at least 10 service connections at least 60 days out of the calendar year.

*(12)* "Safe Drinking Water Act" means 42 U.S.C. 300f and regulations at Title 40, CFR, Parts 141 and 142.

*(13)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings, together with groundwater infiltration and surface water present.

*(14)* "State waters" means any body of water, irrigation system, or drainage system, either surface or underground."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 6, part 1, and the provisions of Title 75, chapter 6, part 1, apply to [section 1].

Approved March 24, 1989.

# CHAPTER NO. 313

[HB 505]

AN ACT AUTHORIZING A COUNTY TO FUND FACILITIES FOR THE DISPLAY AND PERFORMANCE OF THE ARTS AND SIMILAR CULTURAL EVENTS THROUGH THE COUNTY MUSEUM MILL LEVY; AND AMENDING SECTIONS 7-16-2201 THROUGH 7-16-2205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-16-2201, MCA, is amended to read:

**"7-16-2201. Definition of museums.** For the purposes of this part, the word "museums" *means* buildings or parts of buildings of which a principal purpose is the exhibition, *display, or performance* of *matters* of historical, *artistic, cultural, or scientific interest.*"

Section 2. Section 7-16-2202, MCA, is amended to read:

**"7-16-2202. Establishment and acquisition of museums and facilities for the arts.** The board of county commissioners of each county of the state, in addition to all other powers conferred upon them, have *the* authority to:

(1) establish or acquire museums, collections of exhibits, and articles, matters, and things to be included in or added to such museums and collections;

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(2) contribute to publicly owned museums not owned by the county; *and*

*(3) provide facilities for the presentation of visual and performing arts and similar cultural activities.*"

Section 3. Section 7-16-2203, MCA, is amended to read:

"**7-16-2203. Board of trustees — appointment and term.** (1) The board of county commissioners of each county owning or acquiring *a* museum, *facility for the arts,* or collection of exhibits may, at the first regular meeting of the board after acquiring *a* museum, *facility,* or collection, appoint a board of trustees for *the administration of the county museum fund as provided in this part.*

(2) *The* board *consists* of three responsible persons, electors and residents of the county. The *initial terms of members must be staggered, with the* term of one of *the* members *expiring* on June 30 of the next year, the term of *the second member expiring* on June 30 of the second year, and the term of the third member *expiring* on June 30 of the third year. *The* board shall, at its regular meeting in July of each year, appoint a member *to the* board of trustees to take the place of the member whose term expired on June 30 immediately preceding."

Section 4. Section 7-16-2204, MCA, is amended to read:

"**7-16-2204. Role of board of trustees.** It *is* the duty of *the* board:

(1) to have the immediate custody, charge, and control of *the* museum, *facility for the arts,* or collection;

(2) to make rules as may be necessary and reasonable for the preservation, upkeep, care, maintenance, operation, support, and display *of the museum, facility, or collection*; and

(3) to make to the board of county commissioners, not later than July 15 of each year:

(a) a report in writing, detailing all gifts and donations made to *the* museum, *facility for the arts,* or collection and the receipts and expenditures during the immediately preceding fiscal year; and

(b) an estimate of the amount to be budgeted for *the* museum, *facility for the arts,* or collection in the budget of the county for the then current fiscal year."

Section 5. Section 7-16-2205, MCA, is amended to read:

"**7-16-2205. Authorization for mill levy.** (1) The board of county commissioners of any county owning, acquiring, or contributing to any museum, *facility for the arts,* or collection of exhibits as set forth in 7-16-2202:

(a) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support *of the museum, facility, or collection*; and

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(b) to meet and take care of *the* appropriation, may annually levy a tax not to exceed 2 mills on each dollar of the taxable valuation of the property subject to taxation in the county.

(2) The levy shall be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of *the* levy shall be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which *the* levy was made."

Approved March 24, 1989.

# CHAPTER NO. 314

[HB 521]

AN ACT TO CLARIFY THE DEFINITION OF REAL ESTATE BROKER; AND AMENDING SECTIONS 37-51-102 AND 37-51-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-51-102, MCA, is amended to read:

**"37-51-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who:

*(a)* for another or for valuable consideration or who with the intent or expectation of receiving *valuable consideration* negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements *on real estate* or collects rents or attempts to collect rents;

*(b) is* employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition *of real estate* for consideration;

*(c)* engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

*(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers* and who aids, attempts, or

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offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

*(e) aids, attempts, or offers to aid for a fee any person in locating or obtaining any real estate for purchase or lease; or*

*(f) advertises or holds himself out as engaged in any of the activities referred to in subsections (3)(a) through (3)(f).*

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(8) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(9) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(10) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Section 2. Section 37-51-103, MCA, is amended to read:

**"37-51-103. Exemptions.** *(1) An* act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as specified *in this section*, shall constitute the person performing any of *the* acts a real estate broker or real estate salesman. The provisions of this chapter *may* not:

*(a)* apply to any person who, as owner or lessor, shall perform any acts *listed in subsection (1)* with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by *the* owner or lessor;

*(b)* apply to any person acting as attorney-in-fact under the duly executed power of attorney from the owner of any real estate authorizing the

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final consummation of any contract for the purchase, sale, exchange, renting, or leasing of any real estate;

*(c)* be construed to include in any way the services rendered by any attorney at law in the performance of his duty as *an* attorney at law;

*(d)* apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

*(e)* be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by *the* officer;

*(f)* apply to public officials in the conduct of their official duties;

*(g)* apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

*(h)* apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof.

*(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business."*

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 24, 1989.

# CHAPTER NO. 315

[HB 570]

AN ACT ALLOWING ONE PERSON TO HOLD ALL THE OFFICES OF A STATUTORY CLOSE CORPORATION; AND AMENDING SECTION 35-9-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 35-9-305, MCA, is amended to read:

**"35-9-305. Holding more than one office — execution of documents in more than one capacity.** *(1) An individual may hold more*

*than one or all the offices of a statutory close corporation if the corporation's articles of incorporation contain a statement to that effect.*

*(2) An* individual who holds more than one office in a statutory close corporation may execute *or* acknowledge in more than one capacity any document required to be executed *or* acknowledged by the holders of two or more offices."

Approved March 24, 1989.

# CHAPTER NO. 316

[HB 683]

AN ACT TO ESTABLISH A SCIENCE AND TECHNOLOGY DEVELOPMENT PROJECT LOAN PROGRAM CONSISTING OF SEED CAPITAL PROJECTS AND RESEARCH AND DEVELOPMENT PROJECTS; TO PROVIDE FUNDING FOR SEED CAPITAL PROJECT LOANS FROM THE IN-STATE INVESTMENT FUND; TO ESTABLISH PRIORITIES AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL PROJECT LOANS AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO ESTABLISH THE REQUIREMENTS AND PAYBACK PROVISIONS FOR PROJECT LOAN AGREEMENTS; TO ESTABLISH THE SCIENCE AND TECHNOLOGY DEVELOPMENT ACCOUNT; TO REESTABLISH A BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT; TO PROVIDE RULEMAKING AUTHORITY FOR THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT; AMENDING SECTIONS 2-18-103, 17-6-308, 17-7-502, 90-3-102, 90-3-203, 90-3-301, AND 90-3-304, MCA; REPEALING SECTIONS 2-15-1810, 90-3-103, 90-3-302, AND 90-3-401 THROUGH 90-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] requires the Montana board of science and technology development to adopt rules to implement the Montana Science and Technology Financing Act created by this bill.

It is the intent of the legislature that the board adopt rules:

(1) governing the conduct of board business;

(2) establishing application procedures that, at a minimum, require the submittal of an executive summary for a science and technology development project loan, a business plan for a seed capital project loan, a research and development project proposal for a research and development project loan, and other documents necessary to meet the criteria established in chapter 3 of Title 90;

(3) establishing the procedures to be followed by the board in its review process prior to making a science and technology development project loan; and

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(4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the board that may be required in a science and technology development project loan agreement.

The rules should be promulgated so as to promote the purposes and goals stated in the act. These include:

(1) strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(2) using the in-state investment fund for the purposes adopted by the voters of Montana in 1982 in Initiative Measure No. 95, by providing financial programs for new and expanding businesses to encourage the creation of jobs and expansion of the tax base;

(3) assisting in the acceleration of development of technology in the state through the making of technology investments that have significant potential for commercialization in Montana;

(4) working to forge a partnership among the private sector, the university community, and government;

(5) creating a funding source for the board to use in making seed capital development project loans;

(6) creating a mechanism for the board to use in making seed capital project loans; and

(7) creating a mechanism for the board to use in making research and development project loans.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** This chapter may be cited as the "Montana Science and Technology Financing Act".

Section 2. **Findings and purpose.** (1) The legislature finds and declares that:

(a) it is the policy of the state of Montana to promote the health, safety, and general welfare of all the people of the state;

(b) this policy will be furthered through strengthening and diversifying the state's economy by facilitating a public sector-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(c) this strengthening and diversification will be fostered by assisting in the acceleration of development of technology in the state through participation with the private sector in the financing of science and technology development projects that have significant potential for commercialization in Montana;

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(d) the in-state investment fund created through adoption of Initiative Measure No. 95 by the voters of Montana in 1982 is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana;

(e) the Science and Technology Development Board Seed Capital Bond Act contained provisions that were found to be unconstitutional by the Montana supreme court, and the 51st legislature of the state of Montana must remedy those defects through legislation; and

(f) the Montana science and technology development board has demonstrated success in forging a partnership among the private sector, the university community, and government, and this success should be continued through an ongoing legislative commitment to the board's programs.

(2) The purposes of this chapter are to provide:

(a) a funding source for the board to make seed capital project loans;

(b) a mechanism for the board to use in making seed capital project loans; and

(c) a mechanism for the board to use in making research and development project loans, the funding source of which will be provided by separate legislation.

Section 3. **Rulemaking authority.** The board shall adopt rules necessary to implement the provisions of this chapter, including but not limited to rules:

(1) governing the conduct of board business;

(2) establishing application procedures that, at a minimum, require the submittal of:

(a) an executive summary for a science and technology development project loan;

(b) a business plan for a seed capital project loan;

(c) a research and development project proposal for a research and development project loan; and

(d) other documents necessary to meet the criteria established in this chapter;

(3) establishing the procedures to be followed by the board in its review process prior to making a science and technology development project loan; and

(4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the board that may be required in a science and technology development project loan agreement.

Section 4. **Science and technology development project — priorities.** (1) The board shall make a loan for a science and technology development project if it determines that the project has potential to stimulate

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economic development in this state and meets the loan criteria established in this chapter.

(2) The board shall give priority to project proposals that it determines incorporate innovative technologies and involve, but are not limited to, one or more of the following target technologies:

(a) mineral technology;

(b) agricultural technology;

(c) forestry technology;

(d) energy technology;

(e) materials sciences;

(f) information sciences;

(g) biotechnology;

(h) microelectronics and computer sciences; or

(i) hazardous waste treatment and disposal.

Section 5. **General criteria underlying science and technology development project loan program.** The board may make a science and technology development project loan only upon a favorable determination that the proposed project:

(1) is consistent with the findings and purposes of this chapter because it incorporates innovative technology;

(2) has prospects for collaboration between the public and private sectors of the state's economy;

(3) has prospects for achieving commercial success and for creating new jobs in the state;

(4) has potential for commercial success related to the specific product or business development methodology proposed;

(5) can provide matching funds to the project as required under 90-3-301; and

(6) has a management structure that allows ongoing postdisbursement involvement by the board.

Section 6. **Seed capital project — goals.** (1) The board may make a seed capital project loan in a company upon a determination by the board that the project meets the loan criteria established in [sections 5 and 7] and that the project meets the goals established in subsection (2) and involves the development and commercialization of innovative products or processes.

(2) The goals in making a seed capital project loan are:

(a) to assist the development of innovative technology in the state by providing a source of capital to the technology-based entrepreneurial sector in the state's economy;

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(b) to provide financing and follow-along management support for entrepreneurial companies in the state that are attempting to develop products or processes based on innovative technologies; and

(c) to provide a liaison between entrepreneurial companies in the state and other investors in an effort to enhance the pool of capital available to technology-based companies in the state.

Section 7. **Specific criteria for seed capital project loans.** The board may make a seed capital project loan only if it determines that the proposed project complies with the criteria and goals set forth in [sections 5 and 6] and the board further determines that:

(1) the project develops or employs innovative technology to produce a product or process that promises a significant competitive advantage;

(2) the project provides an opportunity to preserve the principal of the loan amount and earn a monetary return;

(3) the project has potential to realize substantial growth in sales and a sales revenue level that provides the capacity to meet the board's payback requirements;

(4) the company is located or preparing to locate within the state;

(5) the project demonstrates a capacity to diversify or add value to the state's basic industries;

(6) the company's management team possesses sufficient business experience to enable the company to reach its commercial potential;

(7) the company has a strong potential for creating and retaining jobs and stimulating tax revenue growth in the state;

(8) the company's product or process is targeted for a sizeable commercial market;

(9) the company's product or process is of sufficient quality to significantly impact the target market; and

(10) the company's business plan is sufficiently designed to complete financing, marketing, and production objectives to accomplish the proposed commercialization.

Section 8. **Research and development project — goals.** (1) The board may make a research and development project loan upon a determination by the board that the proposed project meets the loan criteria established in [sections 5 and 9] and that the project meets one of the goals established in subsection (2).

(2) The goals of the research and development project loan program are:

(a) to significantly upgrade existing research capabilities within the state's research and development institutions and organizations;

(b) to provide financial support to individual research projects that have significant potential to:

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(i) advance technology development in the state; or

(ii) be readily commercialized upon completion of the research phase; or

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace.

(3) These goals may be accomplished by:

(a) supporting the advanced technology centers of excellence program that will institutionalize cooperative arrangements between the public sector and the private sector and significantly build on existing research and development capabilities;

(b) providing financial support for individual research and development projects that are at a preprototype or early stage but that hold significant potential for future commercial success;

(c) providing financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel;

(d) facilitating the flow of information to technology-based entrepreneurial businesses in the state to assist those businesses in reaching their full commercial potential; or

(e) improving the information and resources available to entrepreneurs in the state who are involved in commercialization of innovative products and processes.

Section 9. **Specific criteria for research and development project loans.** The board may make a research and development project loan upon its determination that the proposed project complies with the criteria and goals set forth in [sections 5 and 8] and if the board determines that:

(1) the project has the potential to diversify or add value to a basic industry of the state's economy;

(2) the project demonstrates a clear path to commercial development of the research results within the state;

(3) the project involves university system research participation whenever practical;

(4) the project employs or otherwise takes advantage of existing research and development strengths within the state's university and private research establishments;

(5) the project involves a realistic and achievable research project design;

(6) the project develops or employs an innovative technology;

(7) the project activity is located within the state; and

(8) the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objectives of the project.

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Section 10. **Science and technology development project loans — board action.** (1) If the board determines that a science and technology development project meets the criteria established in this chapter and has complied with the applicable procedures and review processes established by the board, the board may enter into a science and technology development project loan agreement with the loan recipient and authorize the disbursement of funds to the loan recipient.

(2) All decisions of the board are final and not subject to the contested case provisions of Title 2, chapter 4.

Section 11. **Science and technology development project loan agreement.** (1) The board shall enter into a science and technology development project loan agreement with a loan recipient whose product or process will be developed and commercialized as a result of a science and technology development project loan.

(2) The loan agreement, at a minimum, must contain the following provisions:

(a) the project budget;

(b) the financing, marketing, and production milestones for the project that describe project tasks to be achieved in each phase of the project at designated times;

(c) the reporting requirements, including but not limited to:

(i) quarterly financial statements;

(ii) quarterly commercialization progress reports;

(iii) annual reports; and

(iv) reports on any significant project transactions;

(d) the disbursement schedule for the loan;

(e) the payback to the board;

(f) the causes for loan revocation, suspension, or termination; and

(g) the intellectual property provisions.

Section 12. **Seed capital project loan agreement — specific requirements — payback.** (1) In addition to the loan agreement provisions required in [section 11], a seed capital project loan must be structured as contracted debt that includes but is not limited to the following terms:

(a) an interest rate set at the level that provides a return to the board, from paybacks by all of its portfolio companies, in an amount at least equal to the principal amount of the loans and that provides for a market rate of return when considering the overall benefit to the state derived from the projects;

(b) a provision in the note that may defer debt service until maturity of the note, the term of which may not exceed 8 years;

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(c) a loan amount that may not exceed $350,000 in any one round of financing. Successive rounds of financing in which the board participates for any one company may not occur within a 9-month period. The total amount that may be loaned to any one company may not exceed $750,000.

(d) a provision that the note becomes due in full upon dissolution or liquidation of the company.

(2) (a) In addition to the provisions in [section 11] and subsection (1), a seed capital project loan agreement may provide for any of the following:

(i) a convertible debenture;

(ii) a warrant held by the board; or

(iii) a warrant held by a third party for the benefit of the board.

(b) However, the board itself may not convert the convertible debenture, exercise the warrant, or hold stock acquired upon any conversion or exercise.

Section 13. **Research and development project loan agreement — specific requirements — payback.** In addition to the loan agreement provisions described in [section 11], a research and development project loan agreement must be structured as contracted debt with the following terms:

(1) The agreement must include provisions calling for a payback of two times the original loan amount paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the board's financing. This percentage rate may not exceed 5%.

(2) The payback on a research and development project loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects.

Section 14. **Deposit of payback — seed capital and research and development project loans.** (1) The payback of principal and earnings on a seed capital project loan executed under this chapter must be administered pursuant to section 17-6-306.

(2) The payback of principal and earnings on a research and development project loan must be deposited to the state special revenue fund to the credit of the science and technology development account created in [section 15].

(3) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in [section 15] for use by the board. The paybacks include all those received after January 1, 1989.

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Section 15. **Science and technology development account.** (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the science and technology development account:

(a) the payback of principal and earnings on a research and development project loan executed under this chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989.

Section 16. **Montana board of science and technology development — allocation — composition — quasi-judicial powers.** (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least two members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

Section 17. Section 90-3-102, MCA, is amended to read:

**"90-3-102. Definitions.** As used in this chapter the following definitions apply:

*(1) "Act" means the Montana science and technology financing act.*

*(2)* "Board" means the Montana *board of* science and technology development provided for in *[section 16]*.

*(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct business in Montana.*

*(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.*

*(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.*

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*(6)* "Department" means the department of commerce created in 2-15-1801.

*(7) "Expansion capital project" means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.*

*(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.*

*(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the board for use in the science and technology development project.*

*(10) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the board.*

*(11)* "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

*(12) "Research and development project" means a science and technology development project that falls into the category of research capability development, applied technology research, or technology transfer and assistance.*

*(13) "Research and development project loan" means a science and technology development project loan entered into between the board and a loan recipient for a research and development project.*

*(14) "Science and technology* development project" means *either a seed capital project or research and development project* designed to discover, develop, transfer, utilize, or commercialize existing or new, *innovative* technology in order to strengthen and enhance economic development in Montana.

*(15) "Science and technology development project loan agreement" or "loan" means an agreement entered into between the board and the loan recipient of a seed capital project loan or a research and development project loan that:*

*(a) creates a debt relationship between the parties;*

*(b) provides for a financial return to the board;*

*(c) provides economic development potential to the state; and*

*(d) contains the applicable provisions and terms required by this chapter.*

*(16) "Seed capital project" means a startup capital project or expansion capital project.*

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*(17) "Seed capital project loan" means a science and technology development project loan entered into between the board and a loan recipient for a seed capital project.*

*(18) "Startup capital project" means a science and technology development project that assists a company in initiating commercial operations.*

*(19) "State" means the state of Montana.*

*(20) "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually."*

Section 18. Section 90-3-203, MCA, is amended to read:

**"90-3-203. Powers and duties of board.** The board shall:

*(1)* make *loans* in *science and* technology development projects *pursuant to the provisions of this act* in the following areas that have potential to stimulate economic development in Montana:

(a) research capability development;

(b) applied *technology* research;

(c) technology transfer *and assistance*; and

(d) *startup capital or expansion capital projects* for development and commercialization of *innovative* products and processes;

*(2)* accept grants or receive devises of money or property to be used in Montana for *loans made pursuant to* this chapter; *and*

*(3)* submit to the governor and the legislature a report describing the board's programs and accomplishments by *January* 1 of each *odd-numbered* year or at the request of the governor."

Section 19. Section 90-3-301, MCA, is amended to read:

**"90-3-301. Appropriation authority and funding — matching funds.** (1) The board has authority to accept and expend all funds received by it as grants, donations, or other private or public income. These funds are statutorily appropriated as provided in 17-7-502.

*(2)* The appropriations and *loans* made to and by the board are in addition to and separate from general fund appropriations to the university system and other state agencies.

*(3) A loan may not be made for a project for which matching funds have not been received. Matching funds are required prior to any expenditure of board funds for research and development projects or seed capital projects. The board may accept as matching funds those received by the loan recipient within 1 year prior to the execution of the loan agreement. The board may require additional matching funds, depending on the capital need and the degree of risk encountered in the science and technology development project."*

Section 20. Section 90-3-304, MCA, is amended to read:

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**"90-3-304. Accountability — audits.** The board's books and records must be audited by or at the direction of the legislative auditor. The legislative auditor *shall* conduct a performance audit of the board's goals, objectives, and statutory duties prior to the *52nd* legislative session and at times determined necessary by the legislative audit committee. The actual costs of audits must be paid from the board's funds."

Section 21. Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery; *and*

*(14) executive director and senior investment officer of the Montana board of science and technology development.*"

Section 22. Section 17-6-308, MCA, is amended to read:

**"17-6-308. Authorized investments.** (1) *Except as provided in subsection (4), the* Montana in-state investment fund must be invested as authorized by rules adopted by the board. For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee, in lieu of the actual acquisition of such loans or bonds.

(2) The board may use the in-state investment fund to guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given

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in consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain such ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed $3,000,000 with respect to the bonds or loans to finance the project.

(3) The board may make loans from the in-state investment fund to the capital reserve account created pursuant to 17-5-1515 and the guaranty fund created pursuant to 17-5-1520 to establish balances or restore deficiencies therein. The board may agree in connection with the issuance of bonds or notes secured by such account or fund to make such loans. Loans must be on such terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

*(4) The board shall allow the Montana board of science and technology development provided for in [section 16] to administer $7.5 million of the in-state investment fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201.*"

Section 23. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;

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90-3-301; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 24. **Repealer.** Sections 2-15-1810, 90-3-103, 90-3-302, and 90-3-401 through 90-3-420, MCA, are repealed.

Section 25. **Codification instruction.** (1) [Sections 1 through 15] are intended to be codified as an integral part of Title 90, chapter 3, and the provisions of Title 90, chapter 3, apply to the provisions of [sections 1 through 15].

(2) [Section 16] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 16].

Section 26. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1989.

## CHAPTER NO. 317

[HB 2]

AN ACT ESTABLISHING TIME LINES FOR POLLING THE LEGISLATURE AFTER ADJOURNMENT WHEN THE GOVERNOR VETOES A BILL PREVIOUSLY APPROVED BY TWO-THIRDS OF EACH HOUSE; AMENDING SECTION 5-4-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-4-306, MCA, is amended to read:

**"5-4-306. Return when legislature not in session.** (1) If, on the day the governor desires to return a bill without his approval and with his

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objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, secretary, clerk, or any member of such house. Such delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of such delivery and of the time when and the person to whom such delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons for the veto to the secretary of state. The secretary of state shall *within 5 days* mail a copy of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members of each house present, the secretary of state shall poll the members of the legislature. *The secretary of state shall include with the bill and the veto message the date by which each legislator shall return his vote. The date for return must be within 30 days after the date on which the bill and veto message are sent. If* two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(3) The legislature may reconvene to reconsider any bill vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1989.

# CHAPTER NO. 318

[HB 43]

AN ACT PERMITTING A LEGISLATOR TO SIGN STATE DOCUMENTS BY FACSIMILE SIGNATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Facsimile signatures authorized.** (1) As used in this section, "facsimile signature" means a reproduction of the manual signature of a legislator by engraving, imprinting, stamping, or other means.

(2) On state documents requiring a signature, a legislator may use a facsimile signature in lieu of his manual signature. Before using a facsimile signature, the legislator shall file a copy of both his manual and facsimile signatures, certified by him under oath, with the presiding officer of the house of which he is a member.

Section 2. **Effective date.** [This act] is effective on passage and approval.

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Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to signatures affixed on or after January 2, 1989.

Approved March 27, 1989.

# CHAPTER NO. 319

[HB 69]

AN ACT TO AUTHORIZE THE DEPARTMENT OF STATE LANDS TO CANCEL A LEASE OF STATE LAND AND THE PREFERENCE RIGHT FOR FURTHER LEASING OF STATE LAND OF CERTAIN LESSEES CONVICTED OF A FELONY OFFENSE INVOLVING DANGEROUS DRUGS AND INVOLVING THE USE OF ANY PORTION OF THEIR PROPERTY, INCLUDING PRIVATE LAND OR LAND LEASED FROM THE STATE; AMENDING SECTIONS 77-6-210 AND 77-6-212, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, the drug problem in Montana is growing and every effort should be made to curb drug traffic in the state; and

WHEREAS, rural areas in Montana are prime drug cultivation and processing areas for marijuana, hashish, and related products; and

WHEREAS, both privately deeded land and land leased from the state that are under the control of one manager, operator, or family should be considered a unit.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definition.** As used in this part, "unit" means privately deeded land, or land leased from the state, or a combination of the two, that is under the control of one operator, manager, or family.

Section 2. Section 77-6-210, MCA, is amended to read:

**"77-6-210. Cancellation of leases.** (1) The department may cancel a lease for any of the following causes:

(a) fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued;

(b) subleasing state land contrary to the provisions of 77-6-212;

(c) using the land for other purposes than those authorized by the lease;

*(d) conviction of the lessee for a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging,*

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*repackaging, storing, or concealing of a dangerous drug on any portion of the unit; however, when a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in cancellation of the lease unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to a violation of this subsection;*

*(e)* for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state.

(2) Cancellation of a lease under this section does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state."

Section 3. Section 77-6-212, MCA, is amended to read:

**"77-6-212. Loss of preference right — cancellation of lease — subleasing — pasturing agreements.** (1) Except as provided in subsections (3) and (4), a lessee of state land classed as agricultural or grazing land may not exercise the preference right provided in 77-6-205 if he subleases the land for more than 2 years in the term of the lease.

(2) The department shall cancel a lease of state agricultural or grazing land if the lessee subleases the land for more than 3 years during the term of the lease, unless the sublease is made between members of a family as provided in subsection (3).

(3) A lessee under subsection (1) or (2) may sublease the land for a period of not more than 5 years without losing the preference right or the lease to state land if, during the term of the lease, the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(4) The lessee does not lose the preference right or right to lease because of subleasing as provided under this section if:

(a) the sublease is one-third or less acres of the lease; or

(b) the sublease is considered to be a pasturing agreement and is approved in writing by the department prior to the initiation of the agreement.

(5) For purposes of this section, a sublease may not be considered a pasturing agreement unless the lessee personally retains management and physical control of the land and livestock. "Management" means but is not limited to:

(a) providing all costs for improvements, land maintenance, and range renovation, if range renovation is approved by the department;

(b) making all decisions regarding rotation or other placement of livestock on state land;

(c) making all decisions regarding turn-in and turn-out dates of the livestock on state land; and

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(d) making all decisions regarding proper range management, including placement of water, fencing, and salt.

*(6) A lessee of state land classified as agricultural or grazing land shall lose the preference right provided in 77-6-205 upon conviction of a felony offense involving a dangerous drug, as defined in Title 50, chapter 32, and involving the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, or concealing of a dangerous drug on any portion of the unit. When a state land lease is held by an association, company, or corporation, conviction of a member of the association, company, or corporation under this subsection does not result in loss of lease preference unless it appears that the operator, manager, or family in control of the association, company, or corporation is a consenting party or privy to a violation of this subsection."*

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 77, chapter 6, part 2, and the provisions of Title 77, chapter 6, part 2, apply to [section 1].

Section 5. **Applicability.** [This act] applies to state leases entered into on or after [the effective date of this act].

Approved March 27, 1989.

# CHAPTER NO. 320

[HB 101]

AN ACT PROVIDING THAT ALL STATE PAYMENTS MADE TO A LOCAL GOVERNMENT ENTITY ARE TO BE MADE PAYABLE TO THE FINANCE OFFICER OF THE APPROPRIATE COUNTY OR CITY; PROVIDING FOR MAILING OF A NOTICE OF RECEIPT OR ISSUANCE OF THE PAYMENT; AND REQUIRING A COUNTY FINANCE OFFICER TO NOTIFY THE COUNTY CLERK AND RECORDER UPON RECEIPT OF A PAYMENT OR NOTICE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Payments to local government entities — notice.** (1) For the purposes of this section the following definitions apply:

(a) "Finance officer" means the county treasurer, city treasurer, town clerk, or the equivalent provided for in Title 7, chapter 3.

(b) "Local government entity" means a public entity that, whether or not governed by the legislative body of the local government, is required by law to conduct financial affairs through the finance officer of a city, town, or county. The term does not include a school district or a conservation district.

(2) All payments made by a state agency to any city, town, county, or local government entity must be payable to the finance officer of the appropriate city, town, or county. If the payment is to be deposited to the credit

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of a local government entity, the finance officer shall mail a notice of receipt of the payment to the local government entity. When applicable, the finance officer shall deposit the payment in the appropriate fund or account to the credit of the local government entity.

(3) If the state agency is unable to determine if the payee is a government entity, the state agency shall process the claim as if it was not payable to a government entity. The state agency shall also mail a notice of issuance of the payment to the finance officer of the county and city to which the payment was issued.

(4) If a finance officer of a county receives a payment under subsection (2) or a notice of issuance under subsection (3), he shall notify the county clerk and recorder that the payment or notice has been received.

Approved March 27, 1989.

# CHAPTER NO. 321

[HB 128]

AN ACT AUTHORIZING THE BOARD OF MEDICAL EXAMINERS TO IMPOSE A FINE; AND AMENDING SECTION 37-3-323, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-3-323, MCA, is amended to read:

**"37-3-323. Revocation or suspension of license — probation — fine.** (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine while his license was suspended or revoked;

(d) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians

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selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation;

*(e) impose a fine, not to exceed $500 an incident; or*

*(f)* take any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state

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during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

*(8) A fine imposed under this section must be deposited in the general fund.*

*(9) The remedies and method of enforcement of this part as provided for in this section are concurrent and in addition to the other remedies provided in this part."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

# CHAPTER NO. 322

[HB 151]

AN ACT GENERALLY REVISING LIMITS ON THE ESTABLISHMENT OF BANKING FACILITIES; ALLOWING ESTABLISHMENT OF BRANCH BANKS UNDER CERTAIN CONDITIONS; EXTENDING GEOGRAPHIC LIMITS ON DETACHED FACILITIES AND SATELLITE TERMINALS; AMENDING SECTIONS 32-1-109, 32-1-202, 32-1-203, 32-1-371, 32-1-372, 32-6-202, AND 32-6-204, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-1-109, MCA, is amended to read:

**"32-1-109. Definitions.** Unless the context requires otherwise the following definitions apply:

(1) "Board" means the state banking board provided for in 2-15-1803.

*(2) "Branch bank" means a banking house, other than the main banking house, maintained and operated by a bank doing business in the state but does not include a detached facility, as provided for in 32-1-372, or a satellite terminal, as defined in 32-6-103.*

*(3)* "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

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*(4) "City" means a city, town, or municipality, incorporated or unincorporated, that is an aggregation of inhabitants and structures sufficient to constitute a distinct place.*

*(5) "City limits" means, in the case of:*

*(a) an incorporated city, the corporate limits as provided for in 7-2-4101; or*

*(b) an unincorporated place, the boundaries that under the circumstances define the city as a distinct place.*

*(6) "Common ownership" means the ownership, directly or indirectly, of 80% or more of the voting stock of each of two or more banks by an individual, group of individuals, entity, or corporation.*

*(7) "Community advisory board" means a group of citizens to advise the management of a branch bank, a majority of whom must be residents of the county in which the branch bank is located.*

*(8)* "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

*(9)* "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

*(10)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

*(11) "Main banking house" means the principal place of business of a bank in the state.*

*(12)* "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

*(13)* "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

*(14)* "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits which, when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

*(15)* "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

*(16)* "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 2. Section 32-1-202, MCA, is amended to read:

**"32-1-202. Powers and duties of board.** The state banking board shall:

(1) make final determinations upon applications for certificates of authorization for new banks, *branch banks,* mergers, consolidations, and relocations of banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director of the department of commerce as the duties and powers relate to banking."

Section 3. Section 32-1-203, MCA, is amended to read:

**"32-1-203. Rules adopted by board — new banks.** The board shall adopt rules necessary for the administration of 32-1-201 through 32-1-206 *and 32-1-371 and 32-1-372* in accordance with the Montana Administrative Procedure Act. In particular, the board shall adopt rules concerning the authorization of new banks *organized under the laws of this state, establishment of new branches of banks organized under the laws of this state, and approval of the consolidation or merger of banks organized under the laws of this state. Rules* shall contain minimum standards under which an application for a new bank *or for establishment of a branch bank* shall be determined, including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank *or branch bank* at the proposed location;

(2) that the bank *or branch bank* will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated;

(3) a persuasive showing that the new bank *or branch bank* will have a sufficient volume of business to assure solvency and that establishment of the new bank *organized under the laws of this state or the establishment of a branch bank organized under the laws of this state* will be in the public interest."

Section 4. Section 32-1-371, MCA, is amended to read:

**"32-1-371. Consolidation or merger of banks.** (1) The words "bank" or "banks" as used in *32-1-372 and* this section include commercial banks, savings banks, trust companies, investment companies, and other such corporations carrying on the business of banking, trust company, or investment company under the laws of this state or doing business in this state under the national banking laws of the United States.

(2) *(a)* Any two or more banks doing business in this state *and under common ownership* may, with the approval of the state banking board in the case of state banks, consolidate or merge into one bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge. *Before a* consolidation or merger becomes effective, *it* must be ratified by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding. *The* capital stock of *the* consolidated or merged bank may not be less than that required under existing law for the organization of a bank of the class of the largest of the banks so consolidating.

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*(b) Nothing in this section permits a bank or bank holding company located in another state to acquire by consolidation, merger, or otherwise any bank doing business in this state in contravention of 12 U.S.C. 1842.*

*(c) Two or more banks under common ownership may not consolidate or merge unless all banks under the common ownership are parties to the consolidation or merger.*

(3) Upon consolidation or merger, the corporate franchise, corporate life, being, and existence and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers, duties, privileges, and obligations as trustee, executor, administrator, guardian, and all and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed of *the* consolidating or merging banks shall, without the necessity of any instrument of transfer, become consolidated or merged and continued in and held, enjoyed, and assumed by the consolidated or merged bank. *The consolidated or merged* bank shall have and enjoy the right equal as to priorities with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to *the* consolidation or merger and by which will or instrument *the* consolidating or merging bank was nominated by the maker to *the* office.

*(4) Upon consolidation or merger, the consolidated or merged bank shall designate and operate one of the prior main banking houses of the consolidating or merging banks as its main banking house and the bank may maintain and continue to operate the main banking houses of each of the other consolidating or merging banks as a branch bank.*

*(5) A branch bank must offer all services offered at a main banking house."*

Section 5. Section 32-1-372, MCA, is amended to read:

**"32-1-372. Branch bank — detached facilities.** (1) *A* bank may *establish and* maintain *a* branch bank *only as provided in 32-1-371 and this section and, in the case of a bank organized under the laws of this state, with the prior approval of the state banking board,* provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) With the prior approval of the department, any bank *or branch bank* doing business in this state may establish and maintain not more than one detached drive-in and walk-up facility consisting of one or more teller windows. *The detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located.* The facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet

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to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank *or the branch bank*, and such other transactions as are normally and usually conducted or handled at teller windows in the main banking house *or branch bank.*

(3) Any bank authorized to do banking business in this state may utilize a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals hereby authorized shall not be subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

*(4) A bank, other than a bank owned by a holding company not located in Montana, may establish, maintain, and operate a branch bank:*

*(a) in the county or a county adjoining the county in which the main banking house of the branch bank is located; and*

*(b) in a city in which no bank or branch bank is located at the time the branch bank is to be established.*

*(5) Common ownership notwithstanding, a bank may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority. Nothing in this subsection allows a bank owned by a holding company not located in this state to acquire an interest in a bank in contravention of 12 U.S.C. 1842 notwithstanding.*

*(6) A branch bank must have a community advisory board.*"

Section 6. Section 32-6-202, MCA, is amended to read:

"**32-6-202. Authorization for certain satellite terminals required.** (1) Subject to the limitation expressed in 32-6-204 and to the other requirements of this chapter, a business entity owned by a financial institution or financial institutions may install and maintain satellite terminals located within *the county or a county adjoining the county in which the principal place of business, main banking house, or branch bank is located.* Business organizations other than financial institutions may own satellite terminals, provided, however, that such organizations shall not engage in the business of a financial institution and that ownership and possession of such satellite terminals shall be regulated by the department and they shall not be used for any purpose other than is authorized in this chapter.

(2) A merchant may install and operate a point-of-sale terminal. A merchant may utilize a machine as a point-of-sale terminal, which machine performs functions in addition to electronic funds transfer if such other functions do not violate the provisions of this chapter."

Section 7. Section 32-6-204, MCA, is amended to read:

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"**32-6-204. Geographical restrictions on certain satellite terminals.** (1) If a financial institution is a bank, savings and loan association, or a credit union, it may engage in electronic funds transfers by means of an automated teller machine located within *the county or a county adjoining the county in which the principal place of business, main banking house, branch bank, savings and loan association, or credit union is located.*

(2) Any financial institution or its customers may use any automated teller machine located in this state, regardless of its ownership, to perform electronic funds transfers under terms and conditions mutually agreeable to the owner of the automated teller machine and the other user and pursuant to 32-6-203(1).

(3) The department may authorize the operation of an automated teller machine which a financial institution uses only if such institution complies with this chapter and regulations adopted by the department.

(4) No out-of-state financial institution may establish a satellite terminal within the state or lease through other businesses satellite terminals within Montana. An out-of-state financial institution may not engage in electronic funds transfers within the state, except that a customer of an out-of-state financial institution may:

(a) debit his account in an out-of-state financial institution at an in-state satellite terminal:

(i) in order to withdraw cash; or

(ii) to pay for merchandise and services, provided the merchant credits an account in a financial institution whose principal place of business is located within the state; or

(b) make inquiry as to his account balance.

(5) Point-of-sale terminals may be available to all customers authorized by in-state financial institutions for debiting accounts to pay for merchandise and services."

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Effective date.** [This act] is effective January 1, 1990.

Approved 27, 1989.

# CHAPTER NO. 323

[HB 192]

AN ACT ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO SEEK TO ENJOIN AND COLLECT CIVIL PENALTIES FOR VIOLATIONS OF STATUTES AND DEPARTMENTAL RULES AND ORDERS RELATING TO THE REGULATION OF SOURCES OF IONIZING RADIATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Injunctions.** The department may maintain an action in the district court to enjoin a continuance of an act in violation of this chapter or of a rule or order issued under this chapter. If the court finds

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that the defendant is violating or has violated any of the provisions of this chapter or any rule or order issued under this chapter, it shall enjoin the defendant from a continuance thereof.

Section 2. **Civil penalties — deposit in general fund — injunctions not barred.** (1) A person who violates this chapter or a rule or order issued under this chapter is subject to a civil penalty not to exceed $5,000 for each violation. For purposes of this section, each day of a violation is a separate violation.

(2) The department shall initiate civil proceedings in district court to recover a penalty under subsection (1).

(3) Civil penalties collected under this section must be deposited in the general fund.

(4) An action under this section does not bar enforcement of this chapter or of rules or orders issued under it by injunction or other appropriate remedy.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 3, and the provisions of Title 75, chapter 3, apply to [sections 1 and 2].

Section 5. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved March 27, 1989.

# CHAPTER NO. 324

[HB 231]

AN ACT ESTABLISHING A MOTORCYCLE SAFETY TRAINING PROGRAM AND A MOTORCYCLE SAFETY ADVISORY COMMITTEE; INCREASING FEES FOR MOTORCYCLE REGISTRATION; ESTABLISHING A MOTORCYCLE SAFETY TRAINING ACCOUNT AND STATUTORILY APPROPRIATING THE FUNDS IN THE ACCOUNT TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Motorcycle safety promotion.** In cooperation with other state, local government, and private agencies, the department of justice and the superintendent of public instruction are encouraged to promote safety and awareness in the use and operation of motorcycles through action

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appropriate to the agencies' purposes and goals, including advertising and encouraging motorcycle safety training.

Section 2. **Motorcycle safety advisory committee.** (1) There is a motorcycle safety advisory committee. The committee is allocated to the office of the superintendent of public instruction for administrative purposes.

(2) The purpose of the motorcycle safety advisory committee is to advise the superintendent of public instruction and the department of justice concerning motorcycle rider safety issues, motorcycle safety training, motorcycle endorsement testing, and other matters relating to motorcycle safety.

(3) The motorcycle safety advisory committee consists of five members. Except as provided in subsection (5)(a), each member must be appointed for a term of 4 years. The committee consists of:

(a) one peace officer appointed by the governor;

(b) one certified motorcycle safety instructor, as provided in [section 3], who is appointed by the superintendent of public instruction;

(c) two motorcycle riders representing motorcycle riding groups, such as the American motorcyclist association or American bikers aiming toward education (ABATE), to be nominated by these groups for appointment by the governor; and

(d) one representative from the department of justice who is appointed by the attorney general.

(4) A member may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term by the authority that appointed the vacating member.

(5) (a) (i) To allow for staggered membership appointments, the initial terms of two committee members must be for 2 years. These members are:

(A) the peace officer provided for in subsection (3)(a); and

(B) one motorcycle rider, provided for in subsection (3)(c), to be chosen by lot at the organizational meeting.

(ii) The successors for the peace officer and motorcycle rider shall serve 4-year terms.

(b) The first motorcycle safety instructor member appointed under subsection (3)(b) need not be certified by the superintendent of public instruction, but the member shall have a motorcycle safety instructor certification awarded by a national organization concerned with motorcycle safety.

Section 3. **Standards for motorcycle safety training.** The superintendent of public instruction shall establish minimum motorcycle safety training standards, including instruction, courses, and instructor certification for conducting training authorized by [section 4]. The standards must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the superintendent.

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Section 4. **Motorcycle safety training course — fee.** (1) The superintendent shall conduct motorcycle safety training courses throughout the state to the extent that funds are available.

(2) The superintendent may charge a fee for the cost of conducting motorcycle safety training courses. The fee must be deposited in the motorcycle safety training account, as provided in [section 6].

(3) The superintendent may contract with qualified persons throughout the state to conduct motorcycle safety training outside of the formal education system at times and places that will attract the greatest number of students.

(4) (a) State agencies and subdivisions of the state may provide facilities such as classrooms and outdoor paved areas or other resources for conducting motorcycle safety courses.

(b) Subject to the availability of funds, the superintendent may pay for construction, repair, or purchases or award grants from the motorcycle safety training account to provide facilities for motorcycle safety training courses.

Section 5. **Motorcycle registration fee — exemptions.** (1) A motorcycle safety training fee of $2.50 must be assessed on each motorcycle required by 61-3-301 to be registered for licensing.

(2) The county treasurer shall collect the fee and remit the fee to the state treasurer for deposit in the motorcycle safety training account, as provided in [section 6].

(3) Exempt from payment of the fee specified in subsection (1) are vehicles:

(a) leased or owned by the state or a county or municipality;

(b) used for transportation by a nonresident or migratory worker temporarily employed in agricultural work in this state; and

(c) displaying dealer plates, as provided in 61-4-103, while owned by a dealer.

Section 6. **Motorcycle safety training account — source of funds — statutory appropriation.** (1) There is a motorcycle safety training account in the special revenue fund of the state treasury. All revenue collected pursuant to [sections 4 and 5] must be credited to this account.

(2) The money in the motorcycle safety training account is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction to administer motorcycle safety training.

Section 7. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by

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permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; section 1, Chapter 454, Laws of 1987; *and [section 6]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Effective dates.** (1) [Sections 1 through 3, 5 through 8, and this section] are effective July 1, 1989.

(2) [Section 4] is effective July 1, 1990.

Section 10. **Termination.** [This act] terminates June 30, 1993.

Approved March 27, 1989.

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# CHAPTER NO. 325

[HB 239]

AN ACT REQUIRING AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPIST ASSISTANT TO BE CERTIFIED BY THE AMERICAN OCCUPATIONAL THERAPY CERTIFICATION BOARD FOR ORIGINAL LICENSURE OR LICENSURE BY RECIPROCITY; PERMITTING THE BOARD OF OCCUPATIONAL THERAPY PRACTICE TO APPLY SANCTIONS FOR UNPROFESSIONAL CONDUCT AS DEFINED BY RULE; AND AMENDING SECTIONS 37-24-104, 37-24-302, 37-24-303, 37-24-305, AND 37-24-309, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-24-104, MCA, is amended to read:

**"37-24-104. Exemptions.** Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which he is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent himself as an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates his status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the American occupational therapy *certification board (AOTCB)*; or

(7) a person employed as an occupational therapy aide."

Section 2. Section 37-24-302, MCA, is amended to read:

**"37-24-302. Application.** An applicant applying for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on forms prescribed by the board, showing that the applicant meets the requirements of 37-24-303(1)(a) *through (1)(c).*"

Section 3. Section 37-24-303, MCA, is amended to read:

**"37-24-303. Requirements for licensure.** (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he completed the academic requirements or by a nationally recognized professional association;

*(c) submit evidence of having been certified by the American occupational therapy certification board (AOTCB); and*

*(d)* pass an examination as provided for in 37-24-304.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months."

Section 4. Section 37-24-305, MCA, is amended to read:

**"37-24-305. Waiver of requirements for licensure.** (1) The board may waive the examination, education, or experience requirements and grant a license to an applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States which requires standards for licensure that the board considers equivalent to the requirements for licensure under this chapter.

(2) The board may waive the examination, education, or experience requirements and grant a license to a person certified by the American occupational therapy *certification board (AOTCB)* as a certified occupational therapy assistant (COTA) or an occupational therapist registered (OTR) after October 1, 1985.

(3) Occupational therapists and occupational therapy assistants trained in a foreign country must satisfy the examination requirements of 37-24-304. The board shall require foreign-trained applicants, before examination, to furnish proof of educational and supervised fieldwork requirements substantially equal to those required by 37-24-303.

(4) The board may waive the educational requirements and license an applicant as an occupational therapist if the applicant has practiced as an

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occupational therapy assistant for 4 years, has completed the experience requirement before January 1, 1988, and has passed the examination for occupational therapists."

Section 5. Section 37-24-309, MCA, is amended to read:

**"37-24-309. Denial, suspension, or revocation of license.** (1) The board may refuse to issue or renew a license or may revoke or suspend the license of any licensee or applicant if he has:

(a) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(b) *been found guilty of unprofessional conduct as defined by rules adopted by the board;*

(c) been convicted of a crime considered sufficient under 37-1-203 to warrant denial, revocation, or suspension of the license;

(d) violated any lawful order or rule of the board; or

(e) violated any provision of this chapter.

(2) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures that comply with all applicable requirements of the Montana Administrative Procedure Act.

(3) One year after the denial, suspension, or revocation of a license, a person may apply for reinstatement and licensure. The board may in its discretion require an examination for reinstatement."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

## CHAPTER NO. 326

[HB 251]

AN ACT TO CLARIFY THE REAL ESTATE DESCRIPTION REQUISITE OF A UNIFORM COMMERCIAL CODE FINANCING STATEMENT COVERING FARM PRODUCTS; AMENDING SECTIONS 30-9-109 AND 30-9-402, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-9-109, MCA, is amended to read:

**"30-9-109. Classification of goods — "consumer goods" — "equipment" — "farm products" — "inventory".** Goods are:

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

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(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool clip, maple syrup, milk and eggs), *including crops growing or to be grown,* and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment."

Section 2. Section 30-9-402, MCA, is amended to read:

**"30-9-402. Formal requisites of financing statement — amendments — mortgage as financing statement.** (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address and the county of residence of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. *If* the financing statement covers timber to be cut, minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), *or farm products* or *if* the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) .....

Address .....

County of residence .....

Name of secured party (or assignee) .....

Address .....

1. This financing statement covers the following types (or items) of property:

(Describe) .....

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) .....

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate) .....

and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is .....

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever is applicable) Signature of Debtor (or Assignor) .....

Signature of Secured Party (or Assignee) .....

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) *(a)* A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

*(b) A financing statement covering farm products must contain a reasonable description of the real estate upon which the farm products are produced or located. A legal description of the real estate is not required; a statement naming the county or counties in which the farm products are produced or located is sufficient to satisfy this subsection (b).*

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

(i) the goods are described in the mortgage by item or type;

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(ii) the goods are or are to become fixtures related to the real estate described in the mortgage;

(iii) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(iv) the mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes his name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Applicability.** [This act] applies to financing statements filed after September 30, 1989.

Approved March 27, 1989.

# CHAPTER NO. 327

[HB 252]

AN ACT DESIGNATING THE NATIONAL ACCREDITATION COMMISSION FOR SCHOOLS AND COLLEGES OF ACUPUNCTURE AND ORIENTAL MEDICINE AS THE ENTITY AUTHORIZED TO APPROVE SCHOOLS OF ACUPUNCTURE; AND AMENDING SECTION 37-13-302, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-13-302, MCA, is amended to read:

**"37-13-302. Application for licensure — fee — qualifications.** (1) Each person desiring to practice acupuncture in this state shall make application for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board. A fee prescribed by the board shall accompany the application.

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(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board;

(c) a graduate of an approved school of acupuncture that is approved by the *national accreditation commission for schools and colleges of acupuncture and oriental medicine* and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

# CHAPTER NO. 328

[HB 253]

AN ACT GENERALLY REVISING THE DEFINITION OF "UNPROFESSIONAL CONDUCT" FOR PURPOSES OF THE PRACTICE OF MEDICINE; AND AMENDING SECTION 37-3-322, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-3-322, MCA, is amended to read:

**"37-3-322. Unprofessional conduct.** As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

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*(4) employing abusive billing practices;*

*(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.*

*(6)* willful disobedience of the rules of the board;

*(7)* conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

*(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;*

*(9)* administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

*(10)* conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

*(11)* habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

*(12)* conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public *as defined by rule of the board;*

*(13) conduct likely to deceive, defraud, or harm the public;*

*(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;*

*(15)* resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

*(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;*

*(17) practicing medicine under a false or assumed name;*

*(18)* testifying in court on a contingency basis;

*(19)* conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

*(20)* aiding or abetting in the practice of medicine *by* a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

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*(21) allowing another person or organization to use the licensee's license to practice medicine;*

*(22)* malpractice or negligent practice;

*(23)* practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does *it* apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

*(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;*

*(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;*

*(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;*

*(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;*

*(28) failing to cooperate with a lawful investigation conducted by the board;*

*(29)* violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

*(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.*

*(31)* any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

# CHAPTER NO. 329

[HB 278]

AN ACT REVISING THE STATE COMPETITIVE BIDDING REQUIREMENTS TO PERMIT STATE AGENCIES TO PURCHASE SUPPLIES USING ADVERTISED OR CATALOG PRICES UNDER CERTAIN CIRCUMSTANCES; PROVIDING SPECIAL PURCHASING PROCEDURES FOR OFFICE SUPPLIES AVAILABLE THROUGH THE DEPARTMENT OF ADMINISTRATION'S CENTRAL STORES PROGRAM OR UNDER A TERM CONTRACT; REMOVING THE TERMINATION DATE FOR CERTAIN PROCUREMENT-RELATED DEFINITIONS; AMENDING SECTION 18-4-302, MCA, AND SECTION 6, CHAPTER 303, LAWS OF 1987; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-4-302, MCA, is amended to read:

"**18-4-302. (Temporary) Methods of source selection.** (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to 18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of this title, and subsections (2) and (3). Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) At the time the department or a purchasing agency *opens* bids or proposals, *if* a supplier's current publicly advertised or established catalog price *is received at or before the time the bids or proposals are opened and is less than the* bid *of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the* department *or purchasing agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.*

(3) *An* office supply procured by the *department's central stores* program *through bulk purchase* or *procured under a* term contract may be purchased by a purchasing agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised or established catalog price is less than the price *offered by the central stores program or under the term contract and conforms in all material respects to the terms, conditions, and quality offered by the central stores program or under* the term contract. *A* state office supply term *contract* must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

**18-4-302. (Effective July 1, 1989) Methods of source selection.** *(1)* Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by competitive sealed bidding, pursuant to

18-4-303, except as provided in 18-4-133, 18-4-304 through 18-4-306, chapters 5 and 8 of this title, *and subsections (2) and (3).* Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

*(2) At the time the department or a purchasing agency opens bids or proposals, if a supplier's current publicly advertised or established catalog price is received at or before the time the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or purchasing agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.*

*(3) An office supply procured by the department's central stores program through bulk purchase or procured under a term contract may be purchased by a purchasing agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised or established catalog price is less than the price offered by the central stores program or under the term contract and conforms in all material respects to the terms, conditions, and quality offered by the central stores program or under the term contract. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. Section 6, Chapter 303, Laws of 1987, is amended to read:

"Section 6. **Termination date.** *[Sections 2 through 6] terminate* June 30, 1989."

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Section 5. **Applicability.** [This act] applies to a term contract entered into after [the effective date of this act].

Approved March 27, 1989.

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# CHAPTER NO. 330

[HB 308]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO COMMUNITY PROGRAMS FOR PERSONS WITH SEVERE DISABILITIES; TO AUTHORIZE THE STATE TO ADMINISTER COMMUNITY PROGRAMS FOR PERSONS WITH SEVERE DISABILITIES UNDER ANY PROVISION OF TITLE VII OF THE FEDERAL REHABILITATION ACT OF 1973; TO TRANSFER AUTHORITY FOR LICENSING OF COMMUNITY HOMES FOR PERSONS WITH SEVERE DISABILITIES FROM THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 50-5-101, 50-5-301, 53-19-101 THROUGH 53-19-104, 53-19-106, 53-19-110, AND 53-19-112, MCA; REPEALING SECTIONS 53-19-111 AND 53-19-113, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

This bill requires a statement of intent because [section 12] requires the department of family services to adopt administrative rules for the licensing of community homes for persons with severe disabilities. Licensed community homes are family-oriented residences for persons with severe disabilities who are eligible for services designed to assist persons with severe disabilities in living and functioning independently.

It is the intent of the legislature that, in adopting rules, the department develop licensing requirements to govern the administration, operation, and health and safety of standards of community homes for persons with severe disabilities. The department of health and environmental sciences and the state fire marshal shall provide advice and recommendations to the department of family services in the adoption of licensing requirements for the health and safety of community homes.

The rules for licensing of community homes for persons with severe disabilities may address the following: facility acquisition, facility design, group home staffing, staff training, service goals and design, quality of services, client placement procedure, provider grievance procedure, accounting procedures, including a procedure for the accounting of client personal property and belongings, water and waste disposal, food service, laundry, and fire and life safety standards that are compatible with the residential character of the facility.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-19-101, MCA, is amended to read:

**"53-19-101. Purpose.** The legislature, in recognition of needs of persons *with severe disabilities* and of the desirability of meeting those needs on a community level to the extent of available funding and in order to reduce the need for institutional care settings, establishes by this part a community program to assist persons *with severe disabilities* in living and

functioning independently. This program implements Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, *et seq.),* as *may be* amended, for persons *with severe disabilities* in Montana."

Section 2. Section 53-19-102, MCA, is amended to read:

**"53-19-102. Definitions.** As used in this part, the following definitions apply:

(1) "Community home for persons *with severe disabilities*" means a *facility licensed by the department of family services, as provided for in [sections 8 through 12].*

(2) "Department" means the department of social and rehabilitation services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, *et seq.),* as *may be* amended.

*(4) "Person with severe disabilities" means the same as "individual with severe handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(15)(B)), as may be amended. The term includes an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of his physical or mental disability that the services provided under this part are required in order for the individual to achieve a greater level of independence in functioning in family or community or in engaging in or continuing in employment."*

Section 3. Section 53-19-103, MCA, is amended to read:

**"53-19-103. Department authorized to provide services.** (1) Subject to available appropriated funds, services provided under this part include:

(a) vocational and other rehabilitation services that enhance the ability of a person *with severe disabilities* to live and function independently and to *engage in or continue in* appropriate employment; and

(b) any services specified in Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, *et seq.),* as *may be* amended.

(2) To the extent that funds are appropriated and allocated for the purpose of providing services to persons *with severe disabilities,* the department may establish the facilities and services it determines are in the best interest of persons *with severe disabilities.*

(3) The scope, amount, and duration of services made available to persons *with severe disabilities* under this part are within the discretion of the department to determine."

Section 4. Section 53-19-104, MCA, is amended to read:

**"53-19-104. Department contracts for services — governmental units providing for community homes for persons with severe disabilities.** (1) The department may expend money appropriated or available for the purposes of this part and may contract for services for eligible

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persons with any person or entity providing *the* services *to persons with severe disabilities.*

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, may at their own expense provide services, funds, materials, and facilities for services to community homes for persons *with severe disabilities.*"

Section 5. Section 53-19-106, MCA, is amended to read:

"**53-19-106. Eligibility for services.** (1) The department, in its discretion and in accordance with this part and Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, *et seq.),* as *may be* amended, may determine eligibility of persons for services under this part.

(2) To be eligible for services under this part, a person must have a disability of such severity that, to secure and maintain employment or to function independently, he requires intensive vocational or comprehensive rehabilitation services.

(3) *A person with severe disabilities* not receiving other vocational and rehabilitation services provided by the department *has* priority for services provided under this part."

Section 6. Section 53-19-110, MCA, is amended to read:

"**53-19-110. Eligibility for residential services in a community home for persons with severe disabilities.** (1) The department, in its discretion and in accordance with this part, may determine eligibility for residential services in a community home for *persons with severe disabilities,* based on the residential needs of the person and on the availability of residential services. Any person *with a severe disability, as defined in [section 9],* may be considered for placement in a community home, regardless of the source of funding for his residential services.

(2) A person who has a primary diagnosis of mental illness or who receives mental health services under Title 53, chapter 21, is not eligible for placement in *a community home for persons with severe disabilities* unless he is eligible for and receiving services under this part and Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, *et seq.),* as *may be* amended, *or Title XIX of the Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.*"

Section 7. Section 53-19-112, MCA, is amended to read:

"**53-19-112. Rulemaking.** (1) For the purposes of providing services to persons *with severe disabilities,* the department may adopt rules necessary for the administration of services provided under this part. Rules adopted may include but are not limited to eligibility for services, facility design and acquisition, program staffing, staff training, service goals and design, quality of services, client placement procedures, client rights and privileges, client grievance procedures, *fair hearings,* provider grievance procedures, and accounting procedures which include accounting of client financial resources.

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*(2)* The department shall, in cooperation with the board of nursing, adopt rules under which a properly trained staff member of a facility providing services to persons *with severe disabilities* under this part may supervise and assist a client of a facility in taking a medication if the medication is usually self-administered and if a physician has prescribed the assistance."

Section 8. **Purpose.** The legislature, in recognition of the needs of persons with severe disabilities and of the desirability of meeting those needs on a community level, establishes in [sections 8 through 12] authority for the state to license community homes for persons with severe disabilities. Licensed community homes for persons with severe disabilities are for the purpose of providing residential settings for persons with severe disabilities receiving services funded through state-administered programs who otherwise are unable to live independently and who are determined to be capable of residing in noninstitutional settings.

Section 9. **Definitions.** As used in [sections 8 through 12], the following definitions apply:

(1) "Community home for persons with severe disabilities" means a family-oriented residence that is designed to provide residential services for two to eight persons with severe disabilities and that does not provide skilled or intermediate nursing care. This definition does not preclude the provision of skilled or intermediate nursing care by third-person providers.

(2) "Department" means the department of family services established in 2-15-2401.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(4) "Severe disability" means a permanent disability that substantially limits major life activity, such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be diagnosed by a physician. The term includes the condition of a person with severe disabilities as defined in 53-19-102.

Section 10. **Licensing.** (1) A community home for persons with severe disabilities must be licensed annually by the department.

(2) The department may also issue temporary and provisional licenses.

Section 11. **Health and safety standards.** (1) A community home for persons with severe disabilities must be certified annually for fire and life safety by the state fire marshal. The state fire marshal shall notify the department whenever a community home has been certified or refused certification.

(2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure compliance with health and safety standards. If for any reason the local authority cannot complete the inspection in a timely manner, the department of health and environmental sciences may make the inspection to ensure compliance with the standards.

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(b) The inspecting health officer shall notify the department whether a community home is or is not in compliance with applicable standards.

(c) A reasonable fee may be charged by health authorities conducting compliance inspections.

Section 12. **Rulemaking.** (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The department of health and environmental sciences and the state fire marshal shall provide advice and recommendations to the department concerning licensing requirements for health and safety.

Section 13. Section 50-5-101, MCA, is amended to read:

**"50-5-101. (Temporary) Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency which establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency which plans or assists in planning for such facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

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(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies,

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hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(20) "Health maintenance organization" means a public or private organization which provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care

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licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons *with severe diabilities* licensed under *[section 10]*, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the holding out by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

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(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(40) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor.

**50-5-101. (Effective July 1, 1989) Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(6) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(7) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan,

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that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(8) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(9) "Federal acts" means federal statutes for the construction of health care facilities.

(10) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(11) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, and adult day-care centers.

(12) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(13) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(14) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(15) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

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(16) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(17) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(18) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(19) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons *with severe disabilities* licensed under *[section 10]*, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(20) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

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(21) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(22) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(23) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(24) "Offer" means the holding out by a health care facility that it can provide specific health services.

(25) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(26) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(27) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(28) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(29) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(30) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(31) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 14. Section 50-5-301, MCA, is amended to read:

**"50-5-301. (Temporary) When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services)

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essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) of this section if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility which is being replaced or which did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency; or

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

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(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, hospital, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or personal care facility.

(b) (i) "Long-term care facility" means an entity which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more persons.

(ii) The term does not include adult foster care licensed under 53-5-303; community homes for the developmentally disabled licensed under 53-20-305; community homes for persons *with severe disabilities* licensed under *[section 10]*; boarding or foster homes for children licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (b).

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000. **(Repealed effective July 1, 1989—sec. 9, Ch. 477, L. 1987.)"**

Section 15. **Coordination requirements — consolidation of programs authorized.** (1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53, chapter 19, part 1, with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated

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by this section. The authority contained in this subsection is limited to the programs and services described in subsection (1). This subsection supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100].

Section 16. **Repealer.** Sections 53-19-111 and 53-19-113, MCA, are repealed.

Section 17. **Codification instruction.** [Sections 8 through 12] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 8 through 12].

Section 18. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 19. **Effective dates.** (1) [Section 18 and this section] are effective on passage and approval.

(2) [Sections 1 through 17] are effective July 1, 1989.

Approved March 27, 1989.

# CHAPTER NO. 331

[HB 317]

AN ACT LIMITING THE COMPENSATION THAT MAY BE USED IN THE CALCULATION OF AVERAGE FINAL COMPENSATION WHEN A MEMBER OF THE TEACHERS' RETIREMENT SYSTEM RECEIVES A SUBSTANTIAL INCREASE IN COMPENSATION THAT MAY BE INCLUDED IN THE CALCULATION OF AVERAGE FINAL COMPENSATION, SUBJECT TO RULES ADOPTED BY THE TEACHERS' RETIREMENT BOARD; DEFINING ANY AMOUNT IN EXCESS OF THE LIMIT ESTABLISHED AS TERMINATION PAY; AMENDING SECTION 19-4-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature to provide equitable retirement benefits to all members of the teachers' retirement system based on their normal service and salary. The legislature further intends to limit the effect on the retirement system of isolated salary increases received by selected individuals through promotions or one-time salary enhancements during their last years of employment.

The bill provides that the amount of each year's earned compensation that may be used in calculating a member's average final compensation may not exceed the member's earned compensation for the preceding year by more than 10%, except as provided by rule by the board. The legislature intends that the board's rules exempt from the 10% statutory cap increases that:

(1) result from collective bargaining agreements;

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(2) have been granted by the employer to all other similarly situated employees; or

(3) have been received as compensation for summer employment.

In addition, the legislature intends that the board's rules require a member to provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% statutory cap.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-4-101, MCA, is amended to read:

**"19-4-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions.

(4) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(5) (a) "Average final compensation" means the average of the earned compensation of a member during the 3 consecutive years of full-time service which yield the highest average and on which contributions have been made as required by 19-4-602.

*(b) In determining a member's retirement allowance under 19-4-802 or 19-4-804, the amount of each year's earned compensation that may be used in the calculation of average final compensation may not exceed the member's earned compensation from the preceding year by more than 10%, except as provided by rule by the retirement board.*

*(c) Earned compensation in excess of the amount specified in subsection (5)(b) is considered termination pay as provided in subsection (5)(d).*

*(d)* If the earned compensation includes any termination pay, the member shall select one of the following options:

(i) use the total termination pay in the calculation of the average final compensation. The member and the employer shall pay such contributions to the retirement system as are determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time the termination pay is received.

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(ii) use a yearly amount of termination pay added to each of the 3 consecutive years' salary used in the calculation of the average final compensation, if the member has 4 or more years of service with the employer from which the termination pay was received. The amount of such compensation used in the calculation of average final compensation must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer must pay contributions on the termination pay according to the rates provided for in 19-4-602(1) and 19-4-605(1).

(iii) exclude the termination pay from the average final compensation. No contribution is required of either the employer or member, *and contributions made under 19-4-602 and 19-4-605 must be refunded.*

*(e)* For purposes of this subsection, termination pay includes any form of termination pay or any lump-sum payment for deferred compensation, sick leave, or accumulated vacation credit, or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence.

(6) "Beneficiary" means a person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(7) "Creditable service" is that service defined by 19-4-401.

(8) "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including amounts paid under a salary reduction agreement to a tax sheltered annuity or deferred compensation program and the value of any housing provided by the employer. The employer shall fix the value of any housing provided. The term does not include any other amounts paid in kind or fringe benefits not actually paid to a member. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year, except that any termination pay, as defined in subsection (5)*(e)*, received by the member is limited to the amount actually paid and is not the amount he would have earned had he completed the full year.

(9) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(10) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(11) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the

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provisions of 19-4-302. An inactive member is a person included under the provisions of 19-4-303.

(12) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service.

(13) "Pension" means the payments made to a beneficiary for life which are paid out of the pension accumulation fund.

(14) "Pension reserve" means the present value of all payments to be made on account of a pension computed, with regular interest, on the basis of the mortality tables adopted by the retirement board.

(15) "Prior service" means employment of the same nature as service defined in subsection (20) of this section but rendered before September 1, 1937.

(16) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 19-4-501(2).

(17) "Retirement allowance" means the annuity plus the pension.

(18) "Retirement board" means the retirement system's governing board provided for in 2-15-1010.

(19) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 19-4-102.

(20) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 19-4-302."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1989.

# CHAPTER NO. 332

[HB 326]

AN ACT EXEMPTING CERTAIN PARALEGALS, LEGAL ASSISTANTS, AND LAW STUDENTS FROM THE LAWS REGULATING PRIVATE INVESTIGATORS AND PATROLMEN; DEFINING "PARALEGALS" AND "LEGAL ASSISTANTS"; AND AMENDING SECTIONS 37-60-101, 37-60-105, AND 37-60-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-60-101, MCA, is amended to read:

**"37-60-101. Definitions.** As used in this chapter, the following definitions apply:

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(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrolmen and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce provided for in 2-15-1801.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory thereof.

(11) "Licensee" means a person licensed under this chapter.

*(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by a lawyer, law office, governmental agency, or other entity or who may be*

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*authorized by administrative, statutory, or court authority to perform this work.*

*(13)* "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

*(14)* "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

*(15)* "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

*(16)* "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

*(17)* "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

*(18)* "Resident agent" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

*(19)* "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly

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related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

*(20)* "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

*(21)* "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

*(22)* "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, who does not wear or carry a firearm in the performance of those duties."

Section 2. Section 37-60-105, MCA, is amended to read:

**"37-60-105. Exemptions.** This chapter does not apply to:

(1) (a) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure which at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some of his work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(4) *(a)* an attorney at law in performing his duties as *an* attorney at law*;*

*(b)* a legal intern, *paralegal, or legal assistant* employed by a licensed attorney; *or*

*(c) a law student who is serving a legal internship;*

(5) a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the

business of the agency or company, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(6) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(8) an insurance adjuster, as defined by 37-60-101(10); or

(9) an internal investigator or auditor, while making an investigation incidental to the business of the agency or company by which he is singularly and regularly employed."

Section 3. Section 37-60-307, MCA, is amended to read:

**"37-60-307. Action on application.** (1) The board shall grant the application for an original or renewal license or identification card unless it finds that the applicant, branch office manager, or qualifying agent has:

(a) not met the qualifications of 37-60-303;

(b) practiced fraud, deceit, or misrepresentation in the application process;

(c) knowingly made a material misstatement in the application for a license;

(d) violated any of the provisions of this chapter or the rules of the board; or

(e) taken any action warranting suspension or revocation under 37-60-321.

(2) If an original or renewal license or identification card is denied, the applicant may request a hearing within 30 days after receipt of notice of denial. The hearing *must* be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of commerce.

(3) Licenses or identification cards *must* be granted by name for those categories of persons listed in 37-60-101(1), (2), (3), (4), (5), (8), (14), (15), (16), (17), *(18),* (20), (21), *or (22),* or any combination of the foregoing."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

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# CHAPTER NO. 333

[HB 347]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION; ALLOWING ASSESSMENT OF A PENALTY FOR FAILURE TO GIVE PROPER NOTICE OF CANCELLATION OF A POLICY; CLARIFYING A WORKER'S JOB POOL AREA; CLARIFYING A WORKER'S ENTITLEMENT TO TOTAL REHABILITATION BENEFITS; ALLOWING REIMBURSEMENT FOR EXPENSES INCURRED IN TRAVEL TO MEDICAL PROVIDERS; CLARIFYING THAT AN INSURER IS REQUIRED TO GIVE NOTICE PRIOR TO REDUCING BIWEEKLY BENEFITS; COORDINATING THE DEFINITIONS OF WAGES, PAYROLL, AND EARNINGS; ALLOWING THE DIVISION TO RETROACTIVELY APPLY EXPERIENCE MODIFICATION FACTORS TO THE EXPERIENCE RATING SYSTEM; PROVIDING FOR PENALTIES; ALLOWING ELECTION OF LEVELS OF COVERAGE BY PARTNERS AND SOLE PROPRIETORS; DEFINING WAGES FOR GOVERNMENT EMPLOYMENTS; ALLOWING DISCLOSURE OF HEALTH CARE INFORMATION BY HEALTH CARE PROVIDERS TO INSURERS; PROVIDING A PENALTY FOR NOT FILING REPORTS OF ACCIDENTS; PROVIDING THAT A WORKERS' COMPENSATION JUDGE MAY BE DISQUALIFIED FROM HEARING A MATTER BEFORE HIM; AMENDING SECTIONS 39-71-116, 39-71-118, 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704, 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205, 39-71-2304, AND 50-16-527, MCA; AND PROVIDING FOR EFFECTIVE DATES AND RETROACTIVE APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-2205, MCA, is amended to read:

**"39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty.** *(1)* The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

*(2) (a) The division may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).*

*(b) An insurer may contest the penalty assessment in a hearing conducted according to division rules."*

Section 2. Section 39-71-1011, MCA, is amended to read:

**"39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(3) "I.W.R.P." means an individualized, written rehabilitation program prepared by the department of social and rehabilitation services.

(4) "Rehabilitation benefits" means benefits provided in 39-71-1003 and 39-71-1023 through 39-71-1025.

(5) "Rehabilitation provider" means a rehabilitation counselor, other than the department of social and rehabilitation services, certified by the board for rehabilitation certification and designated by the insurer to the division.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

(7) (a) "Worker's job pool" means those jobs typically available for which a worker is qualified, consistent with the worker's age, education, vocational experience and aptitude and compatible with the worker's physical capacities and limitations as the result of the worker's injury. Lack of immediate job openings is not a factor to be considered.

(b) A worker's job pool may be either local or statewide, as follows:

(i) a local job *pool is the job service office area that includes the worker's residence; and*

(ii) *the* statewide job *pool* is the state of Montana."

Section 3. Section 39-71-1023, MCA, is amended to read:

**"39-71-1023. Total rehabilitation benefits during period of rehabilitation services — limitation — termination.** (1) A worker who no longer is temporarily totally disabled but meets the definition of a disabled worker may be eligible for total rehabilitation benefits.

(2) Eligibility for total rehabilitation benefits begins on the date of maximum healing *and continues for a period not to exceed 26 weeks after* the date notice is given to the division by the insurer that a rehabilitation provider has been designated.

(3) Benefits must be paid at the disabled worker's temporary total disability rate. *The* division may extend the *benefit* period for good cause. The insurer may extend the *benefit period* without division approval but must notify the division of the extension.

(4) Total rehabilitation benefits under this section terminate when:

(a) a worker returns to work;

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(b) a worker is qualified to return to work under the priorities in 39-71-1012 pursuant to a division order; or

(c) an I.W.R.P. is submitted to the division by the department of social and rehabilitation services.

(5) The insurer shall provide written notice to the worker and division that benefits have been terminated."

Section 4. Section 39-71-704, MCA, is amended to read:

**"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following *must* be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

*(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the division. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.*

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, *must* be established annually by the workers' compensation division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules *must* be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the division shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The division may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

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Section 5. Section 39-71-609, MCA, is amended to read:

**"39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer — fourteen days' notice required.** If an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates *all* biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the division. *For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial.* However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work."

Section 6. Section 39-71-736, MCA, is amended to read:

**"39-71-736. Compensation — from what date paid.** (1) (a) No compensation may be paid for the first *48 hours or* 6 *days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work* due to an injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services *must* be furnished from the date of injury.

(2) For the purpose of this section, an injured worker is not considered to *be entitled to compensation benefits* if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period."

Section 7. Section 39-71-116, MCA, is amended to read:

**"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no

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beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

(7) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state compensation insurance fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. *However, an* estimate may be made by the division for any employer starting in business *if* no average payrolls are available. *This* estimate *is* to be adjusted by additional payment by the employer or refund by the division, as the case may actually be, on December 31 of such current year. *An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.*

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(22) "Year", unless otherwise specified, means calendar year."

Section 8. Section 39-71-302, MCA, is amended to read:

**"39-71-302. What included in computing payroll.** In computing the payroll, *all wages, as defined in 39-71-123,* received by every worker employed under this chapter *are* included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 9. Section 39-71-1017, MCA, is amended to read:

**"39-71-1017. Rehabilitation panel report.** (1) The rehabilitation panel shall:

(a) review all records, statements, and other pertinent information; and

(b) prepare a report to the division, with copies to the insurer and worker.

(2) The report must:

(a) identify the first appropriate rehabilitation option by following the priorities set forth in 39-71-1012; and

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(b) contain findings of why a higher listed priority, if any, is not appropriate.

(3) Depending on which option the panel identifies as appropriate, the report also must contain findings that:

(a) identify jobs in the local or statewide job pool and the worker's anticipated *wages* from each job;

(b) describe an appropriate on-the-job training program, the worker's anticipated *wages*, and anticipated insurer's contribution, if any;

(c) describe an appropriate retraining program, short- or long-term, the employment opportunities anticipated upon the worker's completion of the program, and the worker's anticipated *wages*; or

(d) describe the worker's potential for specific self-employment, limitations the worker might have in such self-employment and any assistance necessary, and the worker's anticipated *wages*.

(4) An insurer or a worker on his own motion may submit information to the panel prior to the time the panel issues its final report."

Section 10. Section 39-71-2304, MCA, is amended to read:

**"39-71-2304. Determination of rates and classifications by division.** (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience may be necessary or expedient, provided that no change in the classification or rates prescribed *may* be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program *must* be neither more nor less than self-supporting. Employments affected by the provisions hereof *must* be divided by the division into classes, whose rates may be readjusted at such times as the division may actuarially determine. Separate accounts *must* be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance expendable trust fund *must* be one and indivisible.

(3) The division shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it.

(4) In addition, compensation plan No. 3 *must* use an experience rating system for employers enrolled under it. This system *must* reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount. *The division may retroactively apply experience modification factors up to 1 year. The division may only apply modification factors retroactively when the factor is delayed because the rating bureau has not received sufficient data from previous carriers to calculate a final modification factor.*

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(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance expendable trust fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division. The amounts of such reserves and surplus *must* be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

(6) The division shall charge a minimum annual premium on each contract and policy of insurance sufficient to cover the cost of administering the contract or policy.

*(7) (a) Except in a case of fraud, the division may not assess an additional quarterly premium later than 3 years after the date on which the quarterly premium became due.*

*(b) An employer may not receive a refund or an adjustment later than 3 years after the date on which the quarterly premium became due.*"

Section 11. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

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(2) *(a)* If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

*(b)* In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered *and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (d). A* partner or sole proprietor *is not considered* an employee within this chapter until such notice has been given.

*(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.*

*(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection.* For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the *electing employer may elect* not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

Section 12. Section 39-71-123, MCA, is amended to read:

**"39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee travel expense reimbursements or allowances for meals, lodging, travel, and subsistence;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

*(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).*

*(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he is disabled by the injury incurred.*

*(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred."*

Section 13. Section 50-16-527, MCA, is amended to read:

**"50-16-527. Patient authorization — retention — effective period — exception.** (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

*(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection relates only to information concerning the claimant's condition. This authorization is effective only as long as the claimant is claiming benefits."*

Section 14. Section 39-71-307, MCA, is amended to read:

**"39-71-307. Employers and insurers to file reports of accidents — penalty.** (1) Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may from time to time make, a full and complete report of every accident to an

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employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe and shall make specific answers to all questions required by the division under its rules; except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

(2) Every insurance company transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

*(3) An employer, insurer, or adjuster who refuses or neglects to submit to the division reports necessary for the proper review of a claim, as provided in subsection (1), may be assessed a penalty of not less than $200 or more than $500 for each offense. The division shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to division rules."*

Section 15. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 16. **Effective dates — retroactive applicability.** (1) [Sections 13, 15, and 16] are effective on passage and approval.

(2) All other sections of [this act] are effective July 1, 1989.

(3) [Section 13] applies retroactively, within the meaning of 1-2-109, to all requests for health care information in workers' compensation claims.

Approved March 27, 1989.

# CHAPTER NO. 334

[HB 351]

AN ACT CREATING THE CRIMINAL OFFENSE OF POSSESSION OF A SAWED-OFF RIFLE OR SHOTGUN.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Sawed-off firearm — penalty.** (1) A person commits the offense of possession of a sawed-off firearm if he knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both, is less than specified in subsection (1)(a) or (1)(b).

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(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

(a) by a peace officer of this state or one of its political subdivisions;

(b) by an officer of the United States government authorized to carry weapons;

(c) by a person in actual service as a national guardsman;

(d) by a person called to the aid of one of the persons named in subsections (3)(a) through (3)(c);

(e) for educational or scientific purposes in which the firearms are incapable of being fired;

(f) by a person who has a valid federal tax stamp for the firearm issued by the bureau of alcohol, tobacco, and firearms; or

(g) by a bona fide collector of firearms if the firearm is a muzzle loading sawed-off firearm manufactured before 1900.

(4) A person convicted of the offense of possession of a sawed-off firearm must be fined not less than $200 or more than $500 or imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has one or more prior convictions under this section or one or more prior felony convictions under a law of this state, another state, or the United States, he must be fined an amount not to exceed $1,000 or imprisoned in the state prison for a term not to exceed 5 years, or both.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45 apply to [section 1].

Approved March 27, 1989.

## CHAPTER NO. 335

[HB 368]

AN ACT PROVIDING THAT CONVICTION OF NEGLIGENT VEHICULAR ASSAULT IS GROUNDS FOR MANDATORY REVOCATION OF A DRIVER'S LICENSE AND COUNTS FOR 12 CONVICTION POINTS IN DETERMINING HABITUAL TRAFFIC OFFENDERS; AND AMENDING SECTIONS 61-5-205 AND 61-11-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-5-205, MCA, is amended to read:

**"61-5-205. Mandatory revocation of license upon proper authority.** The department upon proper authority shall revoke the driver's

license, including the commercial vehicle operator's endorsement, or the operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when *the* conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination thereof, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; *or*

*(7) negligent vehicular assault as defined in 45-5-205.*"

Section 2. Section 61-11-203, MCA, is amended to read:

**"61-11-203. Definitions.** As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, *or negligent vehicular assault,* 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

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(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) operating a motor vehicle without a license to do so, 2 points (this subsection (j) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(k) speeding, 3 points;

(l) all other moving violations, 2 points.

(3) There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

# CHAPTER NO. 336

[HB 372]

AN ACT TO AUTHORIZE THE ISSUANCE OF COUNTY AND MUNICIPAL OBLIGATION BONDS IF THE ELECTION TO APPROVE THE ISSUANCE HAD BETWEEN 30 AND 40 PERCENT OF THOSE ELECTORS VOTING AND 60 PERCENT OR MORE OF THE ELECTORS VOTED FOR ISSUING THE BONDS; AND AMENDING SECTIONS 7-7-2237, 7-7-2238, 7-7-4235, AND 7-7-4236, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-7-2237, MCA, is amended to read:

**"7-7-2237. Percentage of electors required to authorize bond issue.** Whenever the question of issuing county bonds for any purpose is

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submitted to the registered electors of a county at either a general or special election, *the determination of the approval or rejection of the bond proposition is made in the following manner:*

*(1) determine the total number of electors who were qualified to vote in the bond election;*

*(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;*

*(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and*

*(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or*

*(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or*

*(6) when the calculated percentage in subsection (3) is 30% or less, the bond* proposition *is* considered rejected."

Section 2. Section 7-7-2238, MCA, is amended to read:

**"7-7-2238. Resolution to issue bonds.** (1) If *a sufficient percentage* of the qualified electors entitled to vote at such election voted on such question and a *sufficient percentage* of such votes were cast in favor of the issuing of such bonds *as provided in 7-7-2237*, the board of county commissioners shall, at a regular or special meeting held within 30 days thereafter, pass and adopt a resolution providing for the issuance of such bonds.

(2) Such resolution shall recite:

(a) the purpose for which such bonds are to be issued;

(b) the amount thereof;

(c) the maximum rate of interest the bonds may bear;

(d) the date they shall bear;

(e) the period of time through which they shall be payable; and

(f) the optional provisions, if any.

(3) Such resolution shall provide for the manner of the execution of the bonds. It shall provide that preference shall be given amortization bonds, but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form. The board may in its discretion provide that such bonds may be issued and sold in two or more series or installments.

(4) The resolution shall adopt a form of notice of the sale of the bonds."

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Section 3. Section 7-7-4235, MCA, is amended to read:

**"7-7-4235. Percentage of electors required to authorize the issuing of bonds.** Wherever the question of issuing bonds for any purpose is submitted to the registered electors of a city or town at either a general or special election, *the determination of the approval or rejection of the bond proposition is made in the following manner:*

*(1) determine the total number of electors who were qualified to vote in the bond election;*

*(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;*

*(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and*

*(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or*

*(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or*

*(6) when the calculated percentage in subsection (3) is 30% or less, the bond* proposition *is* considered rejected."

Section 4. Section 7-7-4236, MCA, is amended to read:

**"7-7-4236. Resolution to issue bonds.** (1) If *a sufficient percentage of* the qualified electors of the city or town entitled to vote on the question of issuing bonds voted thereon and a *sufficient percentage* of the votes were cast in favor of the issuing of the bonds *as provided in 7-7-4235*, the city or town council shall, at a regular or special meeting held within 30 days thereafter, pass a resolution providing for the issuance of the bonds.

(2) The resolution shall recite:

(a) the purpose for which the bonds are to be issued;

(b) the amount thereof;

(c) the maximum rate of interest the bonds may bear;

(d) the date they shall bear;

(e) the period of time through which they are payable; and

(f) that any bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued.

(3) The resolution shall provide for the manner of execution of the bonds. It shall provide that preference shall be given amortization bonds

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but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form. The council may in its discretion provide that such bonds may be issued and sold in two or more series or installments.

(4) The resolution shall adopt a form of notice of the sale of the bonds."

Approved March 27, 1989.

# CHAPTER NO. 337

[HB 374]

AN ACT TO BASE THE COMPUTATION OF ANB FOR SCHOOL BUDGET PURPOSES ON ATTENDANCE DURING THE SECOND SEMESTER OF THE PRECEDING SCHOOL YEAR AND THE FIRST SEMESTER OF THE CURRENT SCHOOL YEAR; AMENDING SECTIONS 20-4-301, 20-4-402, 20-5-312, 20-6-401, 20-7-306, 20-9-311, 20-9-313, 20-9-314, 20-9-322, AND 20-9-532, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-4-301, MCA, is amended to read:

**"20-4-301. Duties of teacher — nonpayment for failure to comply.** (1) Any teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and the policies of the trustees of the district;

(b) utilize the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register in the form and on the blanks prescribed by the superintendent of public instruction;

(d) *within 10 days* after the conclusion of each school *semester,* prepare *a* report in the manner and on the forms prescribed by the superintendent of public instruction, which *must* include the pupil attendance and absence data from his teacher's register that is necessary to calculate ANB. *The* report *must* be submitted to:

(i) the district superintendent, if there *is* one;

(ii) the principal of the school, if there *is* one and there is no district superintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal;

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

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(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizenship.

(2) The trustees *are* authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsections (1)(a) or (1)(b) until *the* teacher does comply with *the* provisions.

(3) The trustees *may* not pay any teacher his last month's salary until he has provided a complete and accurate *semester* report to the required person, as determined by *the* person and as required in subsection (1)(d) of this section."

Section 2. Section 20-4-402, MCA, is amended to read:

**"20-4-402. Duties of district superintendent or county high school principal.** The district superintendent or county high school principal *is* the executive officer of the trustees and, subject to the direction and control of the trustees, he shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit *the* selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit *the* selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of thin title, and have the authority to suspend for good cause any pupil of the district;

(7) report the cumulative pupil attendance and pupil absence of the district and any other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent, or county superintendents when reporting for a joint district, *within 10 days* after the conclusion of *each school semester*; and

(8) perform any other duties in connection with the district as the trustees may prescribe."

Section 3. Section 20-5-312, MCA, is amended to read:

**"20-5-312. Reporting, budgeting, and payment for high school tuition.** (1) Except as provided in subsection (2), at the close of the school

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term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district as determined under the provisions of 20-9-311; and

(c) subtracting the total of the per-ANB amount allowed by 20-9-316 through 20-9-321 that represents the foundation program as prescribed by 20-9-303 plus the per-ANB amount determined by dividing the state financing of the district permissive levy by the ANB of the district, from the amount determined in subsection (1)(b).

(2) The tuition for a full-time high school special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for full-time high school special education pupils as designated in 20-9-311 for funding purposes.

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(4) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(5) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due such out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(6) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence *must* be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of at least one-half of the high school tuition obligations established under this section out of the first *money* realized from the county basic special tax for high schools. The remaining obligations must be paid by June 15 of the school fiscal year.

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The payments *must* be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit tuition receipts to the general fund of the applicable high school district, and the tuition receipts *must* be used in accordance with the provisions of 20-9-141.

(7) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district *must* be made by the county commissioners in accordance with 20-9-142. *The* levy requirement *must* be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments *must* be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school *district* feel the transfer privilege provided by this subsection is being abused, they may appeal to the county superintendent of schools, who shall hold a hearing and either approve or disapprove the transfer."

Section 4. Section 20-6-401, MCA, is amended to read:

**"20-6-401. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Component districts" *means* the elementary or high school districts incorporated into the enlarged district.

(2) "Eligible pupils" *means* the average number belonging *(ANB)* in the operating schools of the component districts and the tuition pupils residing in the component districts and attending another district's school under the tuition provisions of the school laws, except that the pupils residing in the component district having the largest total number of pupils *are* ineligible for bonus payment consideration.

(3) "Enlarged district" *means* the elementary or high school district resulting from the consolidation or annexation of two or more component districts.

(4) "General bonus payment" for first- and second-class school districts *must* be $300 per eligible pupil per year for a period of 3 years and *must* be deposited in the enlarged district's general fund. General bonus payment for third-class school districts *must* be $500 per eligible pupil per year for a period of 3 years and *must* be deposited in the enlarged district's general

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fund. *The* payment *must* be made from the state school equalization aid account.

(5) "Transportation bonus payment" *is* the provision of 66 ⅔% state financing of the on-schedule transportation amount as provided by the transportation provisions of the school laws. When an eligible pupil is entitled to transportation, the enlarged district *is* entitled to the transportation bonus payment for *the* eligible pupil for a period of 3 years. *The* payment *must* be made from the state transportation aid account. When the eligible pupil rides a bus providing transportation for ineligible pupils, the 66 ⅔% state financing of the on-schedule amount for this payment *must* be prorated to provide financing for the eligible pupil."

Section 5. Section 20-7-306, MCA, is amended to read:

**"20-7-306. Distribution of secondary vocational education and industrial arts funds.** (1) The superintendent of public instruction shall categorize secondary vocational programs into one of five weighted categories based upon the relative additional costs of those programs.

(2) The superintendent of public instruction shall determine the weighted category to be assigned industrial arts programs.

(3) The superintendent of public instruction shall adjust the weighted categories as necessary to assure that the procedures outlined in subsections (4) and (5) do not result in entitlements that exceed the amount appropriated.

(4) Funding *must* be based upon the average number belonging (ANB) *for* secondary vocational education and industrial arts programs of the high school district in the *ANB calculation period* immediately preceding the year for which funding is requested. The ANB *must* be computed for each separate secondary vocational education and industrial arts program.

(5) For secondary vocational education programs, the ANB generated for each category established in subsection (1) *must* be multiplied by the factor for that category, and the product *must* be multiplied by the applicable ANB dollar value established by 20-9-319. Industrial arts programs *must* be funded at 50% of the category assigned. The high school district is entitled to receive for secondary vocational education and industrial arts, the total of *the computation of* all secondary vocational education and industrial arts categories.

(6) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and *may* be expended only for approved secondary vocational education and industrial arts programs. The expenditure of the money *must* be reported in the annual trustees' report as required by 20-9-213."

Section 6. Section 20-9-311, MCA, is amended to read:

**"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging *must* be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils

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during the *second semester of the preceding school fiscal year and the first semester of the* current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the *second semester of the preceding school fiscal year and the first semester of the* current school fiscal year and by dividing *the* total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, *the* total *must* be calculated in accordance with the provisions of 20-9-805. Attendance for a part of a morning session or a part of an afternoon session by a pupil *must* be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117 prior to January 1, 1974, or pursuant to 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session will be counted as one-half day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB will be computed in a manner prescribed by the superintendent of public instruction, but in no case *may* the ANB exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, his absence after the 10th day of absence *may* not be included in the aggregate days of absence and his enrollment in the school *may* not be considered in the calculation of the average number belonging until he resumes attendance at school.

(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he *is* considered a full-time special pupil but *is* not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he *is* considered regularly enrolled for ANB purposes.

(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town or from another school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated individually for ANB purposes;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school *must* be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, *all* pupils below the 7th grade *must* be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils *must* be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school *are* not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for *the* district.

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(4) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB *must* be determined in a manner prescribed by the superintendent of public instruction."

Section 7. Section 20-9-313, MCA, is amended to read:

**"20-9-313. Circumstances under which the regular average number belonging may be increased.** The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for *the* school *must* be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for *the* high school *must* be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend *the* high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging *must* be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging *must* be based on estimates of increased enrollment approved by the superintendent of public instruction and *must* be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction;

(6) a full-time *special* pupil, as defined in 20-9-311, in a given school *fiscal* year *may* no longer be considered a full-time *special* pupil in the ensuing school *fiscal* year (the superintendent of public instruction may grant one ANB for *the* pupil for the ensuing school *fiscal* year); or

(7) a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in

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the 12th grade. The increase *must* be established by the trustees as though the student had attended to the end of the school *fiscal* year and *must* be approved, disapproved, or adjusted by the superintendent of public instruction."

Section 8. Section 20-9-314, MCA, is amended to read:

**"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district which anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its foundation program for the ensuing school fiscal year in accordance with the following provisions:

*(1)* Prior to May 10, the district shall estimate the probable average number belonging to be realized during the ensuing *ANB calculation period*, based on as much factual information as may be available to the district.

*(2)* No later than May 10, the district shall submit its application for an unusual enrollment increase to the superintendent of public instruction. *The* application *must* include:

(a) the average number belonging *for the preceding ANB calculation period*;

(b) the current average number belonging;

(c) the estimated average number belonging for the ensuing *ANB calculation period*, including the factual information on which the estimate is based, as provided in subsection *(1)*; and

(d) any other information or data that may be requested by the superintendent of public instruction.

*(3)* The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing *ANB calculation period*. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase *that* the estimated average number belonging for the ensuing *ANB calculation period* is over the current average number belonging; and

(b) approve an increase of the average number belonging used to establish the ensuing year's foundation program in accordance with subsection *(5)* if the increase in subsection *(3)(a)* is at least 6%.

*(4)* The superintendent of public instruction shall notify the district of his decision by the fourth Monday in June.

*(5)* Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the foundation program for the ensuing *ANB calculation period is* the difference between the approved estimated average number belonging for the ensuing *ANB calculation period* and 106% of the

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current average number belonging. The amount determined *is* the maximum allowable increase added to the actual *current* average number belonging for the purpose of establishing the ensuing year's foundation program.

*(6)* Any equalization or entitlement increases resulting from provisions of this section *must* be reviewed at the end of the ensuing school fiscal year. If the actual average number belonging is less than the average number belonging used for foundation program and entitlement calculations, the superintendent of public instruction shall revise the foundation program and entitlement calculations using the actual average number belonging. All payments received by the district in excess of the revised entitlements *are* overpayments subject to the refund provisions of 20-9-344(3)."

Section 9. Section 20-9-322, MCA, is amended to read:

**"20-9-322. Elementary instructional aide funding qualification.** (1) *An* elementary school that anticipates an ANB of at least 14 but less than 18 pupils for the ensuing school fiscal year may determine the maximum general fund budget amount under the provisions of 20-9-316(3) or 20-9-318(3) if eligibility is approved in accordance with the following provisions:

(a) No later than May 10 of each year, the school district shall submit its application for approval for instructional aide funding to the superintendent of public instruction. The application *must* include:

(i) the ANB *for the preceding ANB calculation period*;

(ii) the current ANB and the number of grade levels being taught on May 1 of the current year;

(iii) an estimate of the ANB and the number of grade levels anticipated for the ensuing *ANB calculation period*;

(iv) the factual information on which *the estimate is* based; and

(v) any other information or data that may be required by the superintendent of public instruction.

(b) The superintendent of public instruction shall immediately review all *of* the factors of the application and shall approve the application if the anticipated ANB is at least 14 but less than 18 pupils and a minimum of five grade levels are being taught as of May 1 of the current year or documentation is provided *that* indicates that the anticipated ANB will require a minimum of five grade levels to be taught in the ensuing school year.

(2) Whenever a school district applies for and is approved for instructional aide funding under the provisions of subsection (1), the district *shall* hire an instructional aide.

(3) For the purposes of this section, the term "instructional aide" means:

(a) a person who is under the direct supervision of a teacher; or

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(b) a certified teacher."

Section 10. Section 20-9-532, MCA, is amended to read:

**"20-9-532. Calculation and distribution of retirement equalization aid.** (1) The superintendent of public instruction shall administer the distribution of retirement equalization aid by:

(a) determining the estimated revenue available from the net lottery revenue as provided in 23-5-1027;

(b) establishing a list containing each county that levied in the prior school fiscal year in excess of 9 mills to fund its required contribution for retirement fund obligations;

(c) establishing the estimated dollar amount per average number belonging (ANB) by dividing the amount determined in subsection (1)(a) by the total ANB of the counties listed pursuant to subsection (1)(b) for the *preceding ANB calculation period*;

(d) notifying the county superintendent of each county listed in subsection (1)(b) by the fourth Monday in July of the estimated retirement equalization aid available to the county, calculated separately for elementary and high school districts and prorated as specified in 20-9-501 for any joint school district, so that each county superintendent may use the amounts in the manner prescribed in 20-9-501 to calculate the retirement fund levy requirements for elementary and high school districts in the county;

(e) distributing by October 1 the amount of retirement equalization aid for each county listed pursuant to subsection (1)(b); and

(f) keeping a record of the complete data concerning revenue available for retirement equalization aid and the distribution of *the* aid.

(2) If the actual proceeds available for retirement equalization are not sufficient to finance the estimated dollar amount per ANB provided for in subsection (1)(c), each county listed pursuant to subsection (1)(b) must receive a prorated amount."

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Effective date — applicability.** [This act] is effective July 1, 1989, and applies to school budgets and foundation program support for school fiscal years beginning after June 30, 1990.

Approved March 27, 1989.

# CHAPTER NO. 338

[HB 375]

AN ACT ALLOWING THE CONSOLIDATION OF RURAL FIRE DISTRICTS; AND PROVIDING A PROCEDURE FOR CONSOLIDATION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Consolidation of fire districts.** (1) Two or more rural fire districts may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of trustees. At the time they

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vote to consolidate, the boards of trustees must also adopt a consolidation plan. The plan must contain:

(a) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the consolidated rural fire district under subsection (3);

(b) the name of the new rural fire district;

(c) a boundary map of the new rural fire district; and

(d) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

(2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be published as provided in 7-1-2121 in each county in which any part of the consolidated fire district will be located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) Property owners of each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice, more than 50% of the property owners in an existing district protest the consolidation, it is void.

(4) After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.

Approved March 27, 1989.

# CHAPTER NO. 339

[HB 407]

AN ACT CLARIFYING THE DEFINITION OF "CANDIDATE"; REQUIRING REPORTS FROM STATEWIDE CANDIDATES AND CERTAIN POLITICAL COMMITTEES IN YEARS PRIOR TO AN ELECTION YEAR; AND AMENDING SECTIONS 13-1-101 AND 13-37-226, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 13-1-101, MCA, is amended to read:

**"13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(2) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has *solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on his behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:*

*(i) solicitation is made;*

*(ii) contribution is received and retained; or*

*(iii) expenditure is made; and*

*(c) an officeholder who is the subject of a recall election.*

(3) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, special, or primary election held pursuant to the requirements of state law, regardless of the time and/or purpose.

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

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(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (3);

(ii) payments by a candidate for his filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for himself and his family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, so long as such organization is not a primary political committee.

(8) "General election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1).

(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

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(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for such nominations is set on the same date for all similar subdivisions in the state.

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

Section 2. Section 13-37-226, MCA, is amended to read:

**"13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees which are specifically organized to support or oppose a particular statewide candidate or issue shall file reports:

*(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that:*

*(i) the candidate expects to be on the ballot; or*

*(ii) an issue subject to a referendum submitted by the legislature or the people is or is expected to be on the ballot;*

*(b)* on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days next preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before and the day of the election;

*(c)* not more than 20 days after the date of the election; and

*(d)* on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Candidates for a state district office, including but not limited to candidates for the legislature, public service commission, or district court judge, and political committees which are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

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(a) on the 10th day next preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more if received between the 15th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files his or its closing report as specified in 13-37-228(3).

(3) Candidates for any other public office and political committees which are specifically organized to support or oppose a particular local issue shall be required to file the reports specified in subsection (2) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(4) For the purposes of this subsection, a committee which is not specifically organized to support or oppose a particular candidate or ballot issue and which receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 10th day next preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(5) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(6) All reports required by this section shall be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and subsections (1) through (5) of this section."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

# CHAPTER NO. 340

[HB 419]

AN ACT ALLOWING CERTAIN COMMERCIAL VEHICLES HAULING HAY TO CARRY OVERSIZE LOADS; AMENDING SECTION 61-10-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-10-102, MCA, is amended to read:

**"61-10-102. Width.** (1) *Except as provided in subsection (2), no* vehicle, including a bus, unloaded or with load, may have a total outside width

in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) *(a) Subsection (1)* does not apply to an implement of husbandry or a vehicle used for hauling hay, moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle *is more than* 12 feet *wide*, it *must* be preceded by flagman escorts *to warn* other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width *that* are used in farming operations. *Lights which meet the requirements of 61-9-219(4) must be displayed on the* rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flagman escorts.

*(b) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:*

*(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and*

*(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.*

(3) A safety device that the *department* determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1)."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1989.

## CHAPTER NO. 341

[HB 434]

AN ACT CLARIFYING THAT TELECOMMUNICATIONS CONTRACTS ARE NOT INSURANCE CONTRACTS; AMENDING SECTION 33-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-1-201, MCA, is amended to read:

**"33-1-201. Definitions — insurance in general.** For the purposes of this code, the following definitions apply unless the context requires otherwise:

(1) An "alien insurer" is one formed under the laws of any country other than the United States, its states, districts, territories, and commonwealths.

(2) An "authorized insurer" is one duly authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state.

(3) A "domestic insurer" is one incorporated under the laws of this state.

(4) A "foreign insurer" is one formed under the laws of any jurisdiction other than this state. Except where distinguished by context, foreign insurer includes also an alien insurer.

(5) *(a)* "Insurance" is a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies.

*(b) Insurance does not include contracts for the installation, maintenance, and provision of inside telecommunications wiring to residential or business premises.*

(6) "Insurer" includes every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance. The term also includes a health service corporation in the provisions listed in 33-30-102.

(7) A "resident domestic insurer" is an insurer incorporated under the laws of this state and:

(a) if a mutual company, not less than one-half of the policyholders are natural persons who are residents of this state; or

(b) if a stock insurer, not less than one-half of the shares are owned by natural persons who are residents of this state and all of the directors and officers of the insurer are residents of this state.

(8) "State", when used *relating* to jurisdiction, means a state, the District of Columbia, or a territory, commonwealth, or possession of the United States.

(9) "Transact", with respect to insurance, includes any of the following:

(a) solicitation and inducement;

(b) preliminary negotiations;

(c) effectuation of a contract of insurance;

(d) transaction of matters subsequent to effectuation of the contract of insurance and arising out of it.

(10) An "unauthorized insurer" is one not authorized by subsisting certificate of authority issued by the commissioner to transact insurance in this state."

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Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1989.

# CHAPTER NO. 342

[HB 446]

AN ACT INCREASING THE MAXIMUM COMMISSION ALLOWABLE TO A LOTTERY SALES AGENT; AMENDING SECTION 23-5-1016, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-1016, MCA, is amended to read:

**"23-5-1016. Ticket or chance sales agents — licenses.** (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and his business or activity;

(ii) the accessibility of his place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) No person under 18 years of age may sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon conditions he considers necessary.

(5) License applicants shall pay a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

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(8) A license is not assignable or transferable.

(9) *An* employee of a ticket or chance sales agent may *not* be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.

(10) Sales agents are entitled to no more than *a 10%* commission on tickets and chances sold. *Commissions may not come from that part of all gross revenue that is net revenue and is paid to the superintendent of public instruction.*

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of commerce, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic fund transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this part or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

# CHAPTER NO. 343

[HB 449]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SPECIAL EDUCATION COOPERATIVES AND TO JOINT BOARDS FORMED FOR THE PURPOSE OF PROVIDING SPECIAL EDUCATION SERVICES; AMENDING SECTIONS 20-3-362, 20-7-451, AND 20-7-452, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] requires the superintendent of public instruction to adopt rules regarding approval of full service special education cooperatives formed after June 30, 1990. In adopting the rules, the superintendent shall consider the following factors with regard to the districts that intend to participate in the cooperatives: special education enrollment; caseload; service pattern; number of schools participating; geography of the participating districts; and any other factors determined to be relevant by the superintendent of public instruction.

[Section 5] requires the superintendent to adopt rules to determine eligibility for funding reduced caseloads for itinerant personnel of a full service

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special education cooperative or a joint board formed under 20-3-361 for special education purposes. In adopting the rules, the superintendent shall consider the factors related to the cooperative or the joint board that are listed for the rulemaking authority provided in [section 4]. In determining funding under the rules for formation of a cooperative or a joint board, the superintendent shall also consider the length of commitment of the districts forming the cooperative joint board.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-362, MCA, is amended to read:

**"20-3-362. Powers of joint board of trustees.** (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

(a) jointly employ a district superintendent under the provisions of 20-4-401;

(b) jointly employ teachers and specialists under the provisions of 20-4-201;

(c) open a junior high school under the provisions of 20-6-505 if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;

(d) prescribe and administer joint administrative policy;

(e) jointly provide any program or service authorized under 20-3-324, *including any joint provision of special education services as provided in [section 4]*; and

(f) prorate all items of joint expense among the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of any district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the districts."

Section 2. Section 20-7-451, MCA, is amended to read:

**"20-7-451. Authorization to create full service special education cooperatives.** (1) A school district may contract with one or more other school districts to establish a cooperative to perform all special education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services, including but not limited to janitorial and communication services."

Section 3. Section 20-7-452, MCA, is amended to read:

**"20-7-452. Detailed contents of full service special education cooperative contracts.** The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

(1) its duration, *which may not be less than 3 years*;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget *for the cooperative*;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for *a management* board *that is* responsible for administering the cooperative *and that is comprised of trustees* of the contracting districts *or their authorized representatives*;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;

(8) any other necessary and proper matters."

Section 4. **Funding provisions for special education cooperatives or joint boards.** (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 for special education purposes the approved allowable costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343. The total of the payments must be within the limit set by the legislature for approved special education budgets.

(2) A school district that elects to participate in a cooperative shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) After June 30, 1990, a cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service special education cooperatives formed after June 30, 1990.

Section 5. **Reduced caseloads for qualifying cooperatives or joint boards.** The superintendent of public instruction may reduce the caseloads for any itinerant personnel of a full service special education cooperative or

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a joint board formed under 20-3-361 for special education purposes if the cooperative or joint board meets the requirements of [section 4]. The superintendent shall adopt rules to determine the eligibility of a cooperative or a joint board for reduced caseloads under this section.

Section 6. **Codification instruction.** [Sections 4 and 5] are intended to be codified as an integral part of Title 20, chapter 7, part 4, and the provisions of Title 20, chapter 7, part 4, apply to [sections 4 and 5].

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Approved March 27, 1989.

# CHAPTER NO. 344

[HB 573]

AN ACT ALLOWING MACHINE MANUFACTURER BILL ACCEPTORS ON VIDEO DRAW POKER AND KENO MACHINES; AMENDING SECTIONS 23-5-606 AND 23-5-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-606, MCA, is amended to read:

**"23-5-606. Description and specifications.** Each video draw poker machine must:

(1) be inspected in the state of Montana for certification and licensure by the department;

(2) be connected with a system consisting of player-operated terminals. The terminals must be intelligent devices operated by the players in the manner specified in this part.

(3) not have any switches, jumpers, wire posts, or any other means of manipulation that could affect the operation or outcome of a game;

(4) offer only the game of draw poker and have the following method of operation:

(a) the cards must be shuffled after each hand of poker is dealt;

(b) the game must have one memory location for each card in the deck. The deck must be shuffled by use of a random number generator to exchange each card in the deck with another randomly selected card.

(c) after shuffling, five cards must be dealt from the top of the deck;

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(d) any discarded cards must be replaced by remaining cards in the deck, starting with the sixth card and using the cards in the order of the deck;

(e) after the first five cards of a hand have been dealt, the player may be allowed to raise his wager up to the amount of his initial ante, not to exceed eight quarters;

(f) each quarter must represent one credit;

(g) the game must display the hands for which free games or credits will be awarded and the number of free games or credits for each hand;

(h) the machine must have doors to two locking areas, one area containing the logic board and software for the game draw poker and the other housing the cash compartment and mechanical meters. These areas must be locking and separated. Access to one from the other must not be allowed at any time.

(i) (i) the machine must have two mechanisms, hereinafter referred to as "mechanism 1" and "mechanism 2", that accept quarters;

(ii) the machine may have a *machine manufacturer* mechanism that accepts cash in the form of bills not to exceed $5;

(j) the machine must use a color display with images of cards that closely resemble standard poker playing cards;

(k) the machine must be capable of printing a ticket voucher for the player at the completion of each game. If credits are owed the player, a valid ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the value of the prize in numbers;

(iv) the value of the prize in words;

(v) the time of day, in hours and minutes in a 24-hour format;

(vi) the date;

(vii) the machine license number or serial number up to eight digits;

(viii) the sequential number of the ticket voucher; and

(ix) an encrypted validation number from which the validity of the prize can be determined;

(l) an exact copy of each printed ticket voucher must be printed and retained within the machine;

(m) the machine must have nonresettable mechanical meters housed in a readily accessible area that keep a permanent record of:

(i) total coins accepted by both coin acceptors;

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(ii) total credits in the bill acceptor if the machine has a bill acceptor;

(iii) credits played by player;

(iv) credits won by player; and

(v) credits printed out by the ticket voucher printer;

(n) the machine must contain electronic metering, using meters that record the following and display them on the video screen:

(i) total coins *accepted by* mechanism 1 *and mechanism 2 combined*, total *credits in the bill acceptor*, and total *credits accepted by mechanism* 1, *mechanism* 2, *and the bill acceptor* combined;

*(ii)* total credits, total credits played, and total credits won;

*(iii)* total hands of poker played and total hands of poker won;

*(iv)* total winning hands, consisting of a pair, two pair, three of a kind, a straight, a flush, a full house, four of a kind, a straight flush, or five of a kind;

*(v)* total errors from the logic board random access memory; and

*(vi)* total examination of electronic meters;

(o) the machine may not have any functions or parameters adjustable by or through any separate video display or input codes, except for the adjustment of features that are wholly cosmetic;

(p) the machine must issue, by activation of an external switch, an accounting ticket containing a performance synopsis of the machine. The ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the license number of the machine;

(iv) the time of day, in hours and minutes in a 24-hour format;

(v) the date; and

(vi) the electronic meter readings required by subsection (4)(n); and

(5) have a serial number or other identification number permanently affixed to the machine by the manufacturer."

Section 2. Section 23-5-609, MCA, is amended to read:

**"23-5-609. Keno machine specifications.** Each keno machine must:

(1) be inspected in the state of Montana for certification and licensure by the department;

(2) be connected with a system consisting of player-operated terminals. The terminals must be intelligent devices operated by the players in the manner specified in this part.

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(3) not have any switches, jumpers, wire posts, or any other means of manipulation that could affect the operation or outcome of a game; and

(4) offer only the game of keno and have the following method of operation:

(a) the numbers must be mixed after each game is played;

(b) the game must have one memory location for each number. The numbers must be mixed by use of a random number generator.

(c) each game must have a field of numbers from 1 to 75 or 1 to 80 for each game of keno or bingo that is played. There must be at least 20 numbers drawn in each game.

(d) the game must display the number of spaces picked for which free games or credits will be awarded and the number of free games or credits for each game;

(e) the machine must have doors to two or more locking areas, one area containing the logic board and software for the game of keno and the others housing the cash compartment and mechanical meters. These areas must be locking and separated. Access to one from the other must not be allowed at any time.

(f) the machine must have two mechanisms, hereinafter referred to as "mechanism 1" and "mechanism 2", that accept quarters. The machine may have a *machine manufacturer* mechanism that accepts cash in the form of bills not to exceed $5.

(g) each quarter must represent one credit;

(h) the game must display the combinations for which free games or credits will be awarded and the number of free games or credits for each combination;

(i) the machine must be capable of printing a ticket voucher for the player at the completion of each game. If credits are owed the player, the ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the value of the prize in numbers;

(iv) the value of the prize in words;

(v) the time of day, in hours and minutes in a 24-hour format;

(vi) the date;

(vii) the machine license number or serial number up to eight digits;

(viii) the sequential number of the ticket voucher; and

(ix) an encrypted validation number from which the validity of the prize can be determined;

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(j) an exact copy of each printed ticket voucher must be printed and retained within the machine;

(k) the machine must have nonresettable mechanical meters housed in the cash compartment that keep a permanent record of:

*(i) total credits in the bill acceptor, if the machine has a bill acceptor;*

*(ii)* total coins accepted by both coin acceptors;

*(iii)* credits played by player;

*(iv)* credits won by player; and

*(v)* credits printed out by the ticket voucher printer;

(l) the machine must contain electronic metering, using meters that record the following and display them on the video screen:

(i) total coins *accepted by* mechanism 1 *and mechanism 2 combined,* total *credits* in *the bill acceptor, and total credits accepted by* mechanism *1, mechanism* 2, and *the bill acceptor* combined;

*(ii)* total credits, total credits played, and total credits won;

*(iii)* total games of keno played and total games of keno won;

*(iv)* total errors from the logic board random access memory; and

*(v)* total examination of electronic meters;

(m) the machine may not have any functions or parameters adjustable by or through any separate video display or input codes, except for the adjustment of features that are wholly cosmetic;

(n) the machine must issue, by activation of an external switch, an accounting ticket containing a performance synopsis of the machine. The ticket must contain:

(i) the name of the licensed establishment;

(ii) the name of the city, town, or county in which the licensed establishment is located;

(iii) the license number of the machine;

(iv) the time of day, in hours and minutes in a 24-hour format;

(v) the date; and

(vi) the electronic meter readings required by subsection (4)(l)."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Coordination instruction.** If this bill and Senate Bill No. 431 are passed and approved and if Senate Bill No. 431 repeals 23-5-606

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and 23-5-609, the department of justice shall by rule allow machine manufacturer bill acceptors on video draw poker machines and keno machines.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 27, 1989.

# CHAPTER NO. 345

[HB 598]

AN ACT REQUIRING THE BOARD OF CRIME CONTROL TO PROVIDE TECHNICAL ASSISTANCE AND SUPPORTIVE SERVICES TO CRIMINAL JUSTICE AGENCIES; AUTHORIZING THE BOARD TO ESTABLISH MINIMUM STANDARDS FOR EMPLOYMENT OF DETENTION OFFICERS AND DETENTION CENTER ADMINISTRATORS AND STANDARDS FOR DETENTION OFFICER TRAINING SCHOOLS; AND AMENDING SECTION 44-4-301, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-4-301, MCA, is amended to read:

"**44-4-301. Functions.** (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. *The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.*

*(2)* The board shall have the authority to establish minimum qualifying standards for employment of peace officers, *as defined in 7-32-303, detention officers, and detention center administrators.*

*(3) The board shall have the authority to* require basic training for officers, establish minimum standards for equipment and procedures and for advanced in-service training for officers, and establish minimum standards for law enforcement *and detention officer* training schools administered by the state or any of its political subdivisions or agencies, to insure the public health, welfare, and safety.

*(4)* The board may waive the minimum qualification standard for good cause shown."

Section 2. **Definitions.** As used in 44-4-301 and this section, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

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(3) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(4) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [section 2].

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 27, 1989.

# CHAPTER NO. 346

[HB 679]

AN ACT REQUIRING A SMALL MINER WHO HAS PLACER OR DREDGE MINING OPERATIONS TO RECLAIM LANDS DISTURBED BY THE OPERATIONS AND TO POST A PERFORMANCE BOND EQUAL TO THE STATE'S ACTUAL COST OF RECLAIMING THE DISTURBED LANDS, ALTHOUGH THE BOND MAY NOT EXCEED $5,000 PER OPERATION; AUTHORIZING THE DEPARTMENT OF STATE LANDS TO COLLECT ALL ITS REASONABLE COSTS OF RECLAMATION IF A SMALL MINER FAILS TO RECLAIM THE PLACER OR DREDGE MINING OPERATION; AMENDING SECTIONS 82-4-303 AND 82-4-305, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4-303, MCA, is amended to read:

"**82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or a state employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or

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minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences *when* the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

*(10) "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.*

*(11) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.*

*(12)* "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed. *The* proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

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(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

*(13)* (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

*(14)* "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

*(15)* "Underground mining" means all methods of mining other than surface mining.

*(16)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the

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issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of *mining* use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

*(17)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

**"82-4-305. Exemption — small miners — written agreement.** (1) *Except as provided in subsections (3) through (6), the* provisions of this part *do not* apply to any small miner when the small miner annually agrees in writing:

(a) that he *will* not pollute or contaminate any stream;

(b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) he shall provide a map locating his mining operations. *The* map *must* be to a size and scale determined by the department*; and*

*(d) if the small miner's operations are placer or dredge mining, that he shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.*

(2) For small-miner exemptions obtained after September 30, 1985, no small miner may obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

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(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

*(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed $5,000 per operation. However, if the small miner has posted a bond for reclamation with another government agency, he is exempt from the requirement of this subsection.*

*(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, he is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.*

*(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.*

*(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail to the address determined under subsection (5) of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it deems reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department."*

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Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Applicability.** [This act] applies to any placer or dredge mining operation for which a small-miner exemption has not been obtained before July 1, 1989.

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved March 27, 1989.

# CHAPTER NO. 347

[HB 680]

AN ACT REQUIRING A HARD-ROCK MINER USING A CYANIDE ORE-PROCESSING REAGENT TO OBTAIN AN OPERATING PERMIT FOR THE AREA WHERE THE CYANIDE IS USED OR DISPOSED OF; EXEMPTING EXISTING FACILITIES USING CYANIDE ORE-PROCESSING REAGENTS IF THEY ARE REGISTERED BY JANUARY 1, 1990; AMENDING SECTIONS 82-4-303, 82-4-305, AND 82-4-335, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is provided for this bill to elaborate on the type and extent of review that the department of state lands shall give to a small-miner application for an operating permit for a cyanide ore-processing facility. Moreover, the legislature anticipates that implementation of this bill will require rulemaking by the board of land commissioners.

While an operating permit is required for these operations, the legislature intends that, because of the size and limited scope of the operation, the application requirements in general may be substantially less rigorous than the requirements for larger proposed mine operations not under the small-miner exclusion. The department of state lands shall also attempt to review these applications in a shorter timeframe than currently needed to review operating permit applications for larger mines.

To encourage expedited review, the department of state lands shall provide clear guidance to permit applicants concerning requirements for a complete application. In particular, the guidance must help applicants prepare adequate operating and reclamation plans. While the legislature recognizes plan requirements may vary with the site and characteristics of the proposed operation, the department shall attempt to guide the applicant in a manner that minimizes applicant costs while also meeting metal mine reclamation requirements.

Finally, [section 4 of this act] exempts an existing cyanide ore-processing facility if the operator registers the facility by January 1, 1990. In order to provide ample notice to existing operators, the legislature intends that the

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department shall prepare the form and notify affected small miners of the form's availability and purpose as soon as possible by mail or publication, or both.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 82-4-303, MCA, is amended to read:

**"82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this part.

*(3) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.*

*(4)* "Department" means the department of state lands.

*(5)* "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

*(6)* "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

*(7)* "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

*(8)* "Mining" commences *when* the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

*(9)* "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

*(10)* "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals

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on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

*(11)* "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

*(12)* (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that *does not hold an* operating permit under 82-4-335 *except for a permit issued under 82-4-335(2),* and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage

roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

*(13)* "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

*(14)* "Underground mining" means all methods of mining other than surface mining.

*(15)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of *the* use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

*(16)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

**"82-4-305. Exemption — small miners — written agreement.** (1) *Except as provided in subsection (3), the* provisions of this part *do not* apply to any small miner when the small miner annually agrees in writing:

(a) that he *will* not pollute or contaminate any stream;

(b) that he *will* provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(c) *that* he *will* provide a map locating his mining operations. *The* map *must* be *of* a size and scale determined by the department.

(2) For small-miner exemptions obtained after September 30, 1985, *a* small miner may *not* obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

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(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

*(3) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of his operation where the cyanide ore-processing reagent will be used or disposed of.*"

Section 3. Section 82-4-335, MCA, is amended to read:

"**82-4-335. Operating permit.** (1) *A* person *may not* engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, *use cyanide ore-processing reagents,* or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit *is* required for each complex.

*(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of his operation where the cyanide ore-processing reagent will be used or disposed of.*

*(3)* Prior to receiving an operating permit from the board, any person *shall* pay the basic permit fee of $25 and submit an application on a form provided by the board, which *must* contain the following information and any other pertinent data required by the rules:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its principal officers, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

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(e) a map showing the specific area to be mined and the boundaries of the land which will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, location of proposed access roads to be built, and the names and addresses of the surface and mineral owners of all lands within the mining area, to the extent known to *the* applicant;

(f) types of access roads to be built and manner of reclamation of road sites on abandonment;

(g) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(h) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(i) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that *the* structures are safe and stable;

(j) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(k) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

*(4)* Except as provided in subsection *(6)*, the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 *must* be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

*(5)* When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302(4) and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that he has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that he has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining

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impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

*(6)* Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons."

Section 4. **Registration of cyanide ore-processing operations.** An existing facility that uses a cyanide ore-processing reagent and was not, prior to July 1, 1989, required to obtain an operating permit for the facility or to include the facility in an operating permit is not subject to [this act] if the facility is registered by January 1, 1990, by the owner or operator, on a form provided by the department.

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective July 1, 1989.

Approved March 27, 1989.

# CHAPTER NO. 348

[SB 367]

AN ACT PROVIDING A PROCEDURE FOR THE DESTRUCTION, SALE, OR USE BY LAW ENFORCEMENT OFFICIALS OF UNCLAIMED EVIDENCE IN CRIMINAL CASES; AND AMENDING SECTION 46-5-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** The purpose of [sections 1 through 4] is to provide a procedure by which physical evidence in criminal cases may be destroyed or appropriated for law enforcement use when prosecutions have been completed and no further legal proceeding is contemplated or when it does not appear that criminal charges will be initiated.

Section 2. **Petition for destruction, disposal, or use of evidence.** (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, which for the purposes of [sections 1 through 4] means any property that is unlawful to produce or possess;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of such effort;

(g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and

(h) the petitioner's intentions relative to disposition of the items.

(2) If the petition requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

Section 3. **Order.** (1) The court may enter an order providing for the destruction or disposition of the evidence. A proposed order must be presented by the petitioner to the court and may include:

(a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time within which such destruction must be accomplished;

(b) if certain contraband is requested by the petitioner for training or law enforcement purposes, authorization to use the items and a description of each;

(c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain the items by the law enforcement agency and a description of the items;

(d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

(e) if the petition requests, authorization to sell noncontraband property at public sale or auction and deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

(f) authorization to destroy all other items not otherwise provided for.

(2) The order must specify the time period in which destruction or sale shall occur. Within 10 days following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold and the date and method of disposition.

Section 4. **Applicability of other statutes.** The provisions of Title 70, chapter 9, relating to the disposition of unclaimed or abandoned property, do not apply to actions filed pursuant to [sections 1 through 4].

Section 5. Section 46-5-305, MCA, is amended to read:

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"**46-5-305. Disposition of unclaimed property.** If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized, *it must be disposed of pursuant to the provisions of [sections 1 through 4].*"

Section 6. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 46, chapter 5, part 3, and the provisions of Title 46, chapter 5, part 3, apply to [sections 1 through 4].

Approved March 27, 1989.

# CHAPTER NO. 349

[SB 17]

AN ACT REVISING THE PROPERTY TAX ON CERTAIN OLDER MOTOR VEHICLES; CLARIFYING THE MINIMUM TAXABLE VALUE ON MOTOR VEHICLES; EXTENDING THE LOCAL OPTION VEHICLE TAX; AMENDING SECTION 61-3-503, MCA, AND SECTION 40, CHAPTER 611, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-503, MCA, is amended to read:

"**61-3-503. Assessment.** (1) Except as provided in subsection (2), the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or, for *a vehicle that was never listed in any*

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*edition of the preceding guides, the retail value of the vehicle as determined by the county assessor, and thereafter depreciated 10% per year until a value of $500 is reached,* not including additions or deductions for options and mileage; and a lien for taxes and fees due thereon shall occur on the anniversary date of the registration and shall continue until such fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than *$500, the department shall value the vehicle at $500.*

(d) Motorcycles and quadricycles shall be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value shall remain at that minimum so long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value shall remain at that amount so long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1)."

Section 2. Section 40, Chapter 611, Laws of 1987, is amended to read:

"Section 40. **Effective dates — applicability — termination.** (1) Section 38(1) is effective July 1, 1987.

(2) This act is effective on passage and approval and applies to motor vehicles registered on or after July 1, 1987.

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(3) Section 37 terminates January 1, 1988."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date — applicability.** (1) [This act] is effective on passage and approval and applies to motor vehicles that are required to be registered on or after July 1, 1989.

(2) The assessment requirements contained in 61-3-503(1)(c), as amended by [this act], apply to a vehicle that is required to be registered on or after July 1, 1989, including an assessment for any delinquent taxes due on the vehicle.

Approved March 28, 1989.

# CHAPTER NO. 350

[SB 60]

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REVIEW AND APPROVE CHANGE ORDERS UP TO $25,000 FOR CONTRACTS ISSUED UNDER TITLE 18, CHAPTER 2; TO AUTHORIZE THE DEPARTMENT TO REFER CHANGE ORDERS UNDER $25,000 AFFECTING PROJECT SCOPE OR UNUSUAL CHANGE ORDERS TO THE BOARD OF EXAMINERS; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-2-103, MCA, is amended to read:

**"18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing more than $25,000, the department of administration shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of bid amount. However, any contract award that is protested or any contract that is awarded to a bidder other than the lowest bidder is subject to approval by the board of examiners.

(d) review and approve all change orders up to *$25,000.* Any change order *over $25,000* must be with the consent of the board of examiners. *The department may refer change orders under $25,000 that affect the project scope or other unusual change orders to the board of examiners for*

*consideration.* The board of examiners shall act within 14 working days after processing completion by the department.

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department. However, any powers and duties subject to the approval of the board of examiners may not be delegated.

(3) For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.

(4) Before any contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(5) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision where proposed construction costs are $25,000 or less. However, with respect to a project having a proposed cost of $25,000 or less but more than $5,000, the agency awarding the contract must procure at least three informal bids from contractors licensed in Montana, if reasonably available.

(6) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

(7) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (4) of this section.

(8) The department of military affairs may act as contracting agency for buildings constructed under the authority of 18-2-102(2)(d); however, the department of administration may agree to act as contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving such a contract."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 28, 1989.

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# CHAPTER NO. 351

[SB 78]

AN ACT ELIMINATING CERTAIN STATE SPECIAL REVENUE FUND ACCOUNTS THAT PERIODICALLY TRANSFER THEIR UNOBLIGATED BALANCES TO THE GENERAL FUND; REQUIRING MONEY IN THOSE ACCOUNTS TO BE DEPOSITED IN THE GENERAL FUND; AMENDING SECTIONS 16-11-124, 17-2-121, 30-9-403, 30-10-115, 30-10-209, 33-2-708, 33-30-204, AND 33-31-212, MCA; REPEALING SECTIONS 17-2-122, 17-2-123, AND 30-10-116 THROUGH 30-10-118, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-11-124, MCA, is amended to read:

**"16-11-124. Disposition of license fees.** (1) All license fees collected under the provisions of this part shall be deposited with the state treasurer in the *general* fund.

(2) *Each* biennium, there shall be appropriated to the department an *amount* justified and reasonable to operate the department's cigarette enforcement division.

(3) All expenses charged against *the appropriation* shall be justified by itemized claims coupled with standard accounting reports."

Section 2. Section 17-2-121, MCA, is amended to read:

**"17-2-121. Deposits by insurance commissioner.** *All* fees, miscellaneous and examination charges, fines, penalties, *and* those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the insurance commissioner pursuant to Title 33 and the rules adopted thereunder *must be deposited in the general fund.*"

Section 3. Section 30-9-403, MCA, is amended to read:

**"30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(2) Except as provided in subsections (6) and (11), a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless

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it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be set pursuant to subsection (13).

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or if

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indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within *1* working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that he shall establish. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

(11) When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.

(12) Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

(13) The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit in *the general* fund in the state treasury all fees he collects. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 4. Section 30-10-115, MCA, is amended to read:

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"**30-10-115. Deposits to the general fund.** *All* fees, examination charges, and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter must be deposited *in the general fund.*"

Section 5. Section 30-10-209, MCA, is amended to read:

"**30-10-209. Fees.** The following fees shall be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than $200 or more than $1,000. The registration statement for such securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, he shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(2) (a) For registration of a broker-dealer or investment adviser, the fee shall be $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman or investment adviser representative, the fee shall be $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer.

(3) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee shall be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee shall be $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) All fees, examination charges, miscellaneous charges, fines, *and* penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted hereunder must be deposited *in* the general fund."

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Section 6. Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) The commissioner shall collect in advance and the persons so served shall so pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 300.00

(B) foreign insurers ..... 300.00

(ii) annual continuation of certificate of authority ..... 300.00

(iii) reinstatement of certificate of authority ..... 25.00

(iv) amendment of certificate of authority ..... 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state ..... 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation ..... 25.00

(c) filing bylaws or amendment thereto where required ..... 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority ..... 25.00

(e) resident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) ..... 15.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) ..... 15.00

(iii) appointment of agent, each insurer ..... 10.00

(iv) annual renewal, each insurer ..... 10.00

(v) temporary license ..... 10.00

(vi) amendment of license (excluding additions thereto) or reissuance of master license ..... 10.00

(f) nonresident agent's license:

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(i) application for original license, including issuance of license, if issued (life and/or disability) ..... 100.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) ..... 100.00

(iii) appointment of agent, each insurer ..... 10.00

(iv) annual renewal, each insurer ..... 10.00

(v) amendment of license (excluding additions thereto) or reissuance of master license ..... 10.00

(g) solicitor's license:

(i) application for original license, including issuance of license, if issued ..... 15.00

(ii) annual renewal of license ..... 15.00

(iii) appointment of solicitor ..... 10.00

(h) examination for license as agent or solicitor, each examination ..... 15.00

(i) surplus lines agent license:

(i) application for original license and for issuance of license, if issued ..... 50.00

(ii) annual renewal of license ..... 50.00

(j) adjuster's license:

(i) application for original license and for issuance of license, if issued ..... 15.00

(ii) annual renewal of license ..... 15.00

(k) insurance vending machine license, each machine, each year ..... 10.00

(l) commissioner's certificate under seal (except when on certificates of authority or licenses) ..... 10.00

(m) copies of documents on file in the commissioner's office, per page ..... .50

(n) policy forms:

(i) filing each policy form ..... 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks ..... 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days ..... 100.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any

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fees and examination and miscellaneous charges that are collected by him pursuant to Title 33 and the rules adopted thereunder.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 7. Section 33-30-204, MCA, is amended to read:

"**33-30-204. Fees.** (1) Every health service corporation subject to the provisions of this chapter shall pay the following fees to the commissioner for enforcement of the provisions of this chapter:

(a) enrollment representative's license:

(i) application for original license and issuance of license ..... $15

(ii) annual renewal ..... $15

(iii) examination for license, for each examination ..... $15

(b) filing any other statement or report ..... $1

(c) for a certified copy of any document or other paper filed in the office of the commissioner, per page ..... $.50

(d) for the certificate and for affixing the seal thereto ..... $10

(e) filing of a membership contract ..... $25

(f) filing of a membership contract package ..... $100

(g) filing annual report, other than as part of application for original license ..... $25

(h) issuance of health service corporation license ..... $300

(i) annual continuation of health service corporation license ..... $300

(2) The commissioner shall promptly deposit with the state treasurer, to the credit of the *general fund*, all fees and license fees received by him under this section."

Section 8. Section 33-31-212, MCA, is amended to read:

"**33-31-212. Fees.** (1) Each health maintenance organization shall pay to the commissioner the following fees:

(a) for filing an application for a certificate of authority or amendment thereto, $300;

(b) for filing an amendment to the organization documents that requires approval, $25;

(c) for filing each annual statement, $25;

(d) for annual continuation of certificate of authority, $300.

(2) All fees, miscellaneous charges, fines, penalties, *and* those amounts received pursuant to 33-31-211(3) and 33-31-405 collected by the commissioner pursuant to this chapter and the rules adopted thereunder must be deposited in the *general fund*.

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(3) The director may assess fees necessary and adequate to cover the expenses of the director's functions under this chapter. Such fees are statutorily appropriated to the department of health as provided in 17-7-502."

Section 9. **Repealer.** Sections 17-2-122, 17-2-123, and 30-10-116 through 30-10-118, MCA, are repealed.

Section 10. **Effective date.** [This act] is effective July 1, 1989.

Approved March 28, 1989.

## CHAPTER NO. 352

[SB 192]

AN ACT TO CLARIFY THAT AN ENTITY OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH OF STATE GOVERNMENT SHALL SPEND NONGENERAL FUND MONEY WHENEVER POSSIBLE BEFORE SPENDING GENERAL FUND MONEY; AND AMENDING SECTION 17-2-108, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-2-108, MCA, is amended to read:

**"17-2-108. Expenditure of nongeneral fund money first.** *An office or entity of the executive, legislative, or judicial branch of state government* shall apply expenditures against nongeneral fund money *whenever* possible before using general fund appropriations."

Approved March 28, 1989.

## CHAPTER NO. 353

[SB 193]

AN ACT TO PROVIDE THAT AN ENTITY OF THE EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH OF STATE GOVERNMENT MAY NOT MAKE CHARGES AGAINST ANY APPROPRIATION UNLESS THE BALANCE OF THE APPROPRIATION IS AVAILABLE AND ADEQUATE; AND AMENDING SECTION 17-8-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-8-202, MCA, is amended to read:

**"17-8-202. Preaudit and transmittal of claims.** (1) The department of administration is not required to preaudit a liquidated claim against the state. However, all state agencies shall submit copies of all claims to the department of administration which may preaudit those

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claims it considers necessary. The agency shall retain the original of all documents sent to the department. These documents are subject to postaudit by the legislative auditor.

(2) *An office or entity of the executive, legislative, or judicial branch of state government* may not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a claim, the department shall audit it and, if it is a valid claim, transmit it to the governor for presentation to the legislature."

Approved March 28, 1989.

## CHAPTER NO. 354

[SB 214]

AN ACT REMOVING THE LAW THAT LIMITS THE MONEY AVAILABLE FOR SUBSIDIZED ADOPTION; REPEALING SECTION 53-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Section 53-4-305, MCA, is repealed.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 28, 1989.

## CHAPTER NO. 355

[SB 298]

THE LONG-TERM CARE INSURANCE ACT; ESTABLISHING A PROGRAM TO BE ADMINISTERED BY THE COMMISSIONER OF INSURANCE; GRANTING RULEMAKING AUTHORITY TO CONDUCT THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because section 14 authorizes the commissioner of insurance of the state of Montana to promulgate rules relating to the disclosure of policy provisions, coverage, marketability, and prohibited practices in the solicitation of long-term care insurance. The legislature intends that the rules which the commissioner adopts to implement this bill be designed principally to protect the insurance-buying public

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in Montana by requiring insurers who offer long-term care insurance to accurately describe coverages provided by the insurance product and to prohibit certain practices regarding coverage, renewal, and eligibility. The legislature further intends that the commissioner adopt those rules in accordance with 33-1-313, which grants the commissioner general rule-making authority and which permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any laws of this state or with any reasonable implication of those laws; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Long-Term Care Insurance Act".

Section 2. **Purpose.** The purpose of [this act] is to:

(1) promote the public interest;

(2) promote the availability of long-term care insurance;

(3) protect applicants for long-term care insurance from unfair or deceptive sales or enrollment practices;

(4) establish standards for long-term care insurance;

(5) facilitate public understanding and comparison of long-term care insurance policies; and

(6) facilitate flexibility and innovation in the development of long-term care insurance coverage.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual long-term care insurance policy, the person who seeks to contract for the insurance; and

(b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Certificate" means a document issued to a member of the group covered under a group insurance policy that has been delivered or issued for delivery in this state as evidence that the individual named in the certificate is covered under the policy.

(3) "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

(a) (i) an employer;

(ii) a labor organization;

(iii) a trust established by an employer or labor organization; or

(iv) a trustee of a fund established by an employer or labor organization or a combination thereof for:

(A) employees or former employees or a combination thereof; or

(B) members or former members of the labor organization or a combination thereof;

(b) a professional, trade, or occupational association for its current, former, or retired members or combination thereof, if the association:

(i) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(ii) has been maintained in good faith for purposes other than obtaining insurance; or

(c) an association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations.

(i) Prior to advertising, marketing, or offering the policy within this state, the association or the insurer of the association shall file evidence with the commissioner that the association has:

(A) a minimum of 100 persons at the outset;

(B) been organized and maintained in good faith for purposes other than obtaining insurance;

(C) been in active existence for at least 1 year; and

(D) a constitution and bylaws requiring that the association hold regular meetings at least annually to further purposes of the membership; except for credit unions, the association collect dues or solicit contributions from members; and the members have voting privileges and representation on the governing board and committees.

(ii) Thirty days after filing, the association is considered as having satisfied the organizational requirements unless the commissioner finds after hearing that the association does not satisfy the organizational requirements.

(d) a group other than as described in subsections (3)(a) through (3)(c) if the commissioner determines that the:

(i) issuance of the group policy is not contrary to the best interests of the public;

(ii) issuance of the group policy would result in economies of acquisition or administration; and

(iii) benefits are reasonable in relation to the premiums charged.

(4) (a) "Long-term care insurance":

(i) means a policy as defined in subsection (5) that is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for a covered person, on an expense-incurred, indemnity,

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prepaid, or other basis, for a necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care service provided in a setting other than an acute care unit of a hospital; and

(ii) includes group and individual insurance policies or riders, whether issued by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

(b) Long-term care insurance does not include an insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(c) An insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage and that also contains long-term care insurance benefits of a duration of at least 6 months is not required to meet the requirements of [this act] unless the premium allocable to the long-term care insurance benefits contained in the policy is greater than 25% of the total policy premium.

(5) "Policy" means a policy as defined in 33-15-102, a membership contract as defined in 33-30-101, a health care services agreement as defined in 33-31-102 delivered or issued for delivery in this state by an insurer, fraternal benefit society, health service corporation, prepaid health plan, health maintenance organization, or similar organization.

(6) "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person.

Section 4. **Extraterritorial jurisdiction.** A group long-term care insurance policy or certificate may not be delivered or issued for delivery to a resident of Montana under a group policy issued in another state to a group described in [section 3(3)(d)] unless it is approved by:

(1) the commissioner; or

(2) the insurance regulatory official of a state that has statutory and regulatory long-term care insurance requirements substantially similar to those adopted in Montana.

Section 5. **Disclosure and performance standards for long-term care insurance.** (1) The commissioner may by rule adopt standards for full and fair disclosure, setting forth the manner, content, and disclosures required to be made in a long-term care insurance policy, including but not limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage provisions;

(d) coverage of dependents;

(e) preexisting conditions;

(f) termination of insurance;

(g) continuation or conversion;

(h) probationary periods;

(i) limitations;

(j) exceptions;

(k) reductions;

(l) elimination periods;

(m) requirements for replacement;

(n) recurrent conditions; and

(o) definition of terms.

(2) A group long-term care insurance policy must include a provision relating to conversion on termination of eligibility as described in 33-22-508 or include a provision for continuation of coverage that maintains coverage under the existing group policy if the coverage would otherwise terminate.

Section 6. **Prohibited practices and policy provisions.** A long-term care insurance policy may not:

(1) be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of an insured or a certificate holder;

(2) contain a provision establishing a new waiting period if existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(3) provide coverage for only skilled nursing care or provide substantially more coverage for skilled nursing care in a facility than coverage for lower levels of care.

Section 7. **Preexisting condition — definition.** (1) A long-term care insurance policy or certificate other than a policy or certificate issued to a group as defined in [section 3(3)(a)] may not use a definition of preexisting condition which is more restrictive than the definition in [section 3].

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within 6 months following the effective date of coverage of an insured person.

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(3) The commissioner may extend the limitation periods in subsections (1) and (2) as to specific age group categories in specific policy forms if extending the limitation periods is in the best interests of the public.

(4) An insurer may use an application form designed to elicit the complete health history of an applicant and on the basis of the answers on that application perform underwriting in accordance with the insurer's established underwriting standards. Unless otherwise provided in the long-term care insurance policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (2) expires. A long-term care insurance policy or certificate may not exclude or use a waiver or rider of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subsection (2).

Section 8. **Prior hospitalization or institutionalization.** (1) A long-term care insurance policy may not be delivered or issued for delivery in Montana if the policy conditions eligibility for a benefit:

(a) on a prior hospitalization requirement; or

(b) provided in an institutional care setting on the receipt of a higher level of institutional care.

(2) A long-term care insurance policy containing a limitation or condition for eligibility other than those prohibited in subsection (1) must clearly label, in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits", the limitations or conditions, including the required number of days of confinement.

(a) A long-term care insurance policy that contains a benefit advertised, marketed, or offered as a home health care benefit may not condition receipt of a benefit on a prior institutionalization requirement.

(b) A long-term care insurance policy that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days for which benefits are paid.

(3) A long-term care insurance policy that provides a benefit only following institutionalization may not condition the benefit upon admission to a facility for the same or a related condition within a period of less than 30 days after discharge from the institution.

Section 9. **Loss ratio standards.** The commissioner may by rule establish loss ratio standards for long-term care insurance policies.

Section 10. **Right to return policy — free look.** (1) A person insured under an individual long-term care insurance policy has the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason. An individual long-term care insurance policy must have a notice prominently printed on the first page of the policy or attached to it stating that the insured has the right to return the policy within 10 days of its

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delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

(2) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason. A long-term care insurance policy or certificate issued pursuant to a direct response solicitation must have a notice prominently printed on the first page or attached to it stating that the insured has the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examining the policy, the insured is not satisfied for any reason.

Section 11. **Outline of coverage.** (1) An insurer shall deliver an outline of coverage to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

(a) The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of the outline of coverage.

(b) In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(c) In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the earlier of the applicant's request or the delivery of the policy.

(2) The outline of coverage must include:

(a) a description of the principal benefits and coverage provided in the policy;

(b) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(c) a statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premiums. Continuation or conversion provisions of a group policy must be specifically described.

(d) a statement that the outline of coverage is a summary only of the policy issued or applied for, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(e) a description of the terms under which the policy or certificate may be returned and premium refunded; and

(f) a brief description of the relationship of cost of care and benefits.

Section 12. **Required content for certificate.** A certificate issued pursuant to a group long-term care insurance policy that is delivered or issued for delivery in this state must include:

(1) a description of the principal benefits and coverage provided in the policy;

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(2) a statement of the principal exclusions, reductions, and limitations contained in the policy; and

(3) a statement that the group master policy determines governing contractual provisions.

Section 13. **Compliance required.** A policy may not be advertised, marketed, or offered in this state as long-term care insurance or nursing home insurance unless it complies with [this act].

Section 14. **Rules.** The commissioner may adopt rules necessary to implement [this act].

Section 15. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 16. **Codification instruction.** [This act] is intended to be codified as an integral part of Title 33, chapter 22, and the provisions of Title 33, chapter 22, apply to [this act].

Section 17. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. **Applicability.** [This act] applies to policies delivered or issued for delivery in this state on or after October 1, 1989. [This act] is not intended to supersede the obligations of entities subject to [this act] to comply with the substance of other applicable insurance laws insofar as they do not conflict with [this act], except that laws and regulations designed and intended to apply to medicare supplement insurance policies may not be applied to long-term care insurance. A policy that is not advertised, marketed, or offered as long-term care insurance or nursing home insurance need not meet the requirements of [this act]. A policy that contains long-term care insurance benefits of a duration of at least 6 months must meet the requirements of [this act] if the premium allocable to the long-term care benefits is greater than 25% of the total policy premium.

Section 19. **Effective date.** [Section 8 and this section] are effective one year after passage and approval.

Approved March 28, 1989.

## CHAPTER NO. 356

[SB 326]

AN ACT MAKING KEYLOCK OR CARDTROL PURCHASES ELIGIBLE FOR GASOLINE TAX REFUND; AMENDING SECTION 15-70-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-223, MCA, is amended to read:

**"15-70-223. Estimate allowed for agricultural use.** (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60%

of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices *or by evidence of keylock or cardtrol purchases* as an estimate of off-roadway use.

(2) If any invoice *or evidence* is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department of revenue.

(3) An applicant whose use does not qualify as agricultural use may not estimate and must maintain records as required by 15-70-222."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 28, 1989.

# CHAPTER NO. 357

[SB 346]

AN ACT REVISING PROVISIONS CONCERNING THE PURCHASE OF CREDITABLE SERVICE FOR OUT-OF-STATE EMPLOYMENT AND FOR EMPLOYMENT WHILE ON LEAVE UNDER THE TEACHERS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-4-402 AND 19-4-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-4-402, MCA, is amended to read:

**"19-4-402. Creditable service for out-of-state employment.** *(1) (a)* A *member* may apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if *the* service had been performed in the state of Montana. *If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, he must receive a refund of his contributions for the out-of-state service before qualifying service under this section.* The *member must* be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, not exceeding 5, that the retirement board determines to be creditable service, if he contributes to the retirement system *as provided in subsection (2).*

*(b) For the purpose of this section, out-of-state employment includes service performed outside the United States in a federal or other public or private school or institution if the service would have been acceptable under this chapter if performed in the state of Montana.*

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*(2) (a) Except as provided in subsection (2)(b), to qualify service under this section, the member must contribute* an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate *must* be *the* rate in effect at the time he is eligible for *the* service.

*(b) To qualify service performed outside the United States in a federal or other public or private school or institution, the member must contribute for each year of service to be qualified an amount equal to the combined employer and employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service or after July 1, 1989, whichever date is later, plus interest at the rate the contribution would have earned had the contribution been in his account from the date he was eligible to qualify the service. The contribution rate must be the rate in effect at the time he is eligible to qualify the service or the rate in effect on July 1, 1989, whichever date is later.*

*(3)* The contributions *required under subsection (2)* may be made in a lump-sum payment or in installments as agreed between the *member* and the retirement board."

Section 2. Section 19-4-403, MCA, is amended to read:

**"19-4-403. Creditable service for employment while on leave.** *(1)* A *member with 5 years or more of creditable service in the retirement system* may apply for creditable service for employment while on leave. *If he contributes to the retirement system as provided in subsection (2), the member must* be awarded creditable service *in an amount not exceeding 2 years as determined by the board,* conditional upon his having been a member prior to his leave and upon his completing *1 year* of active membership in Montana subsequent to his return.

*(2) To qualify service under this section, the member must contribute* an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account. The contribution rate *must* be *the* rate in effect at the time he is eligible for *the* service. The contribution may be made in a lump-sum payment or in installments as agreed between the *member* and the retirement board."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Section 5. **Coordination instruction.** If Senate Bill No. 125 and this bill are passed and approved:

(1) the first sentence in 19-4-402 must read as follows:

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"(1) (a) A member who became a member before July 1, 1989, may apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana."

(2) the first sentence in 19-4-403 must read as follows:

"(1) A member with 5 years or more of creditable service in the retirement system who became a member before July 1, 1989, may apply for creditable service for employment while on leave."

Approved March 28, 1989.

# CHAPTER NO. 358

[SB 401]

AN ACT GIVING THE BOARD OF REGENTS ACCESS TO GOVERNMENT RECORDS THAT WOULD ASSIST IT IN COLLECTING DEFAULTED STUDENT LOANS UNDER THE MONTANA GUARANTEED STUDENT LOAN PROGRAM; AND AMENDING SECTION 15-30-303, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Access to governmental records.** The board may request from any state or local government agency or officer information that would aid in the collection of delinquent student loans. All state and local government officials and employees shall cooperate with the board in supplying the information and shall on request supply the board with any relevant information regarding the location of the debtor. The board shall use the information only for purposes related to the collection of student loans or other educational debts.

Section 2. Section 15-30-303, MCA, is amended to read:

**"15-30-303. Confidentiality of tax records.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to

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any action or proceedings under the provisions of this chapter or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of said reports or of the facts shown thereby as are pertinent to the action or proceedings and no more.

(3) Nothing herein shall be construed to prohibit:

(a) the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns shall be preserved for 3 years and thereafter until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) of this section shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 1 year thereafter.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either such officer to inspect the return of income of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) Further, notwithstanding any of the provisions of this section, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance,

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reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given; *and*

*(c) to the board of regents information required under [section 1].*"

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 26, part 11, and the provisions of Title 20, chapter 26, part 11, apply to [section 1].

Approved March 28, 1989.

# CHAPTER NO. 359

[SB 402]

AN ACT ELIMINATING THE PUBLIC SERVICE COMMISSION'S AUTHORITY TO ORDER INSTALLATION OF SIGNALS AT RAILROAD CROSSINGS; AUTHORIZING THE HIGHWAY COMMISSION TO PRIORITIZE THE EXPENDITURE OF FUNDS ON RAILROAD CROSSINGS; PROVIDING FOR PUBLIC HEARINGS; AND REPEALING SECTIONS 69-14-621 THROUGH 69-14-625, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates to the highway commission authority to adopt rules to prioritize the expenditure of funds on railroad crossings. It is the intent of the legislature that in adopting those rules, the commission comply with applicable statutes and with its own rules. The legislature further intends that the commission develop a system of prioritization of crossings to be applied by the department of highways, including but not limited to consideration of sight distance, number and speed of trains, traffic volume, approach angle, highway alignment, approach grades, crossing width, and any other hazardous conditions that warrant the installation of signals.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Authority of commission to prioritize expenditures on railroad crossings — public hearing.** (1) The commission shall adopt rules to prioritize the expenditure of funds on railroad crossings.

(2) If requested by the board of county commissioners of any county, the commission shall conduct a public hearing in the affected county on the priority assigned any railroad crossing, and based on the evidence presented at the public hearing, the commission may revise the priority of the railroad crossing.

Section 2. **Repealer.** Sections 69-14-621 through 69-14-625, MCA, are repealed.

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, and the provisions of Title 60, chapter 2, apply to [section 1].

Approved March 28, 1989.

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# CHAPTER NO. 360

[HB 185]

AN ACT RESTRICTING THE DETENTION OF A PERSON IN A JAIL OR OTHER CORRECTIONAL FACILITY PENDING A MENTAL HEALTH COMMITMENT HEARING; REQUIRING MENTAL HEALTH FACILITIES TO IDENTIFY APPROPRIATE MENTAL HEALTH PLACEMENTS FOR A PERSON DETAINED IN A JAIL OR OTHER CORRECTIONAL FACILITY; REQUIRING RAPID TRANSFER TO AN APPROPRIATE PLACEMENT; AND AMENDING SECTIONS 53-21-120 AND 53-21-124, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-21-120, MCA, is amended to read:

**"53-21-120. (Temporary) Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.** (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) *Except as provided in 53-21-124, a* person may *not* be detained *pursuant to this part* in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

(5) No detention may be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).

(6) No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part. **(Terminates July 1, 1989—sec. 18, Ch. 376, L. 1987.)**

**53-21-120. (Effective July 1, 1989) Detention to be in least restrictive environment — preference for mental health facility —**

**court relief.** (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) *Except as provided in 53-21-124, a* person may *not* be detained *pursuant to this part* in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 2. Section 53-21-124, MCA, is amended to read:

**"53-21-124. Detention of respondent pending hearing or trial.** *(1)* The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith.

*(2)* In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 53-21-120. *A respondent may be detained in a jail or other correctional facility only if no appropriate mental health facility is immediately available for placement. When the respondent is detained in a jail or other correctional facility, the jail or other facility shall immediately notify the regional central office of the nearest mental health facility, as defined in 53-21-201, that a person detained in the jail or correctional facility is in need of an appropriate placement. Upon notification, the mental health facility shall identify an appropriate placement for the respondent, in accordance with the requirements of 53-21-120. Until a placement is identified, the mental health facility shall report on the status of the placement to the jail or correctional facility within every 12-hour period, including weekends and holidays. When an appropriate placement has been identified, the court must be promptly notified and the respondent must be transferred to that facility as soon as reasonably practical.*

*(3) If the respondent is detained, he* shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing."

Approved March 29, 1989.

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# CHAPTER NO. 361

[HB 264]

AN ACT AUTHORIZING COUNTY JAIL WORK PROGRAMS; PROVIDING THAT A PERSON CONVICTED OF A NONVIOLENT OFFENSE MAY VOLUNTEER TO DO DESIGNATED WORK FOR THE COUNTY IN LIEU OF INCARCERATION IN THE COUNTY JAIL; PROVIDING THAT A COUNTY JAIL WORK PROGRAM IS TO BE SUPERVISED BY THE COUNTY SHERIFF; PROVIDING THAT THE CRIME OF ESCAPE IS APPLICABLE TO A PERSON PARTICIPATING IN A COUNTY JAIL WORK PROGRAM; AND AMENDING SECTIONS 7-32-2208 AND 45-7-306, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **County jail work program.** (1) A county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail.

(2) A participant in a county jail work program is considered to be in confinement for the purposes of laws relating to confinement in jail, sentencing, and length of imprisonment.

(3) A county jail work program may be established in addition to any county jail labor, rehabilitation, or other program, including the authority of the board of county commissioners to require persons confined to the county jail to perform labor pursuant to 7-32-2223.

Section 2. **Operation of county jail work program.** (1) If a county establishes a county jail work program, it must be authorized by the board of county commissioners and supervised by the county sheriff. The sheriff may permit persons eligible under the provisions of [section 3] to work on county projects or for county departments as designated by the board of county commissioners. A person participating in a county jail work program may not:

(a) have his labor or other work contracted out to a private party;

(b) be required to do labor or other work that furthers the private interests of a government employee or official;

(c) be permitted or required to do labor or other work that relates to anything other than public projects, public services, or other public matters;

(d) be used to displace any regular county employee;

(e) perform the duties of any vacant county position; or

(f) work on any construction or reconstruction project.

(2) No county may reduce its current workforce in order to transfer the duties of such a reduction to persons participating in a county jail work program.

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(3) A person participating in a county work program may not be physically confined in the county jail during the course of his participation. The person may not be required to perform county work in excess of 8 hours each calendar day. Each calendar day in which a person has participated in a county jail work program is 1 day of incarceration for the purposes of serving a sentence of imprisonment.

(4) The sheriff, in conjunction with the board of county commissioners, shall establish a written policy on how jail inmates may volunteer for participation in the county work program and what criteria the sheriff shall use to choose volunteers if there are more eligible persons volunteering than are needed in the program.

(5) In order to ensure public safety, the sheriff may in his discretion deny a person permission to participate in the program and may revoke a person's permission to participate at any time.

(6) A person participating in a program is under official detention as that term is used in defining the crime of escape in 45-7-306. Failure to appear for work at a time and place scheduled for participation in a program constitutes the offense of escape.

Section 3. **Inmate eligibility for participation.** A person may be permitted to participate in a county jail work program if he:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, domestic abuse, incest, or any other offense in which violence is an element of the crime or for an offense which during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace, or his successor; and

(4) has applied to participate to the county sheriff, and the sheriff, pursuant to written policy, has approved the participation.

Section 4. Section 7-32-2208, MCA, is amended to read:

**"7-32-2208. Actual confinement of prisoners required.** A prisoner committed to the county jail for trial *or* examination or, *except as provided in [sections 1 through 3], a prisoner convicted of* a public offense must be actually confined in the jail until he is legally discharged. If he is permitted to go at large out of the jail, except by virtue of a legal order or process *or pursuant to a program established by law*, it is an escape."

Section 5. Section 45-7-306, MCA, is amended to read:

**"45-7-306. Escape.** (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a

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peace officer pursuant to arrest, detention for extradition or deportation, supervision while under a supervised release program, *participation in a county jail work program under [sections 1 through 3]*, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. *A person also commits the offense of escape if he is participating in a county jail work program under [sections 1 through 3] and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.*

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, city jail, or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, halfway house, life skills center, or supervised release program; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection."

Approved March 29, 1989.

# CHAPTER NO. 362

[HB 412]

AN ACT CLARIFYING THE DEPARTMENT OF ADMINISTRATION'S RESPONSIBILITY REGARDING STATE BUILDINGS IN THE STATE CAPITOL AREA; AND AMENDING SECTION 2-17-111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-17-111, MCA, is amended to read:

**"2-17-111. Custodial care of capitol buildings and grounds.** (1) The department of administration is custodian of all state property in the

state capitol area, *which is the geographic area within a 10-mile radius of the state capitol.*

(2) It is the duty of the department to supervise and direct the work of caring for and maintaining buildings and equipment in the *state* capitol area. The department shall include in the department's budget the necessary requests for appropriations for the maintenance, repair, replacement, renewal, or addition to state buildings and equipment in the *state* capitol area. *The department shall provide or approve all custodial, maintenance, and security work done on state-owned or leased buildings in the state capitol area.*

(3) *A* state agency may *not* alter, improve, repair, or remodel a state building in the *state* capitol area without the approval of the department.

(4) It is the duty of the department of fish, wildlife, and parks to maintain *or approve the maintenance of* the grounds in the state capitol area."

Approved March 29, 1989.

# CHAPTER NO. 363

[HB 424]

AN ACT AUTHORIZING THE COUNTY TREASURER OR A DEPUTY COUNTY TREASURER TO ACKNOWLEDGE A SIGNATURE FOR PURPOSES OF CERTIFICATION OF OWNERSHIP, REGISTRATION, AND TAXATION OF MOTOR VEHICLES, BOATS, AND SNOWMOBILES; AMENDING SECTIONS 23-2-510, 23-2-612, 61-3-201, 61-3-205, AND 61-3-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-510, MCA, is amended to read:

**"23-2-510. (Effective July 1, 1988) Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and *the* signature must be acknowledged before *the county treasurer, a deputy county treasurer, or* a notary public.

(2) Within 20 calendar days *after endorsement*, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the *application* upon receipt. *A* certificate of ownership may *not* be issued by the department until any outstanding certificate is surrendered

to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $6 for each application for transfer of ownership, of which $4 must be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 20 calendar days from the date of purchase to register the motorboat or sailboat, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the vessel for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the 20-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or sailboat constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a duly licensed dealer intending to resell the motorboat or sailboat and who operates it only for demonstration purposes, but every dealer, upon transferring *his* interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien."

Section 2. Section 23-2-612, MCA, is amended to read:

**"23-2-612. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of 23-2-601 through 23-2-644, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and *the* signature shall be acknowledged before *the county treasurer, a deputy county treasurer, or* a notary public.

(2) Within 20 calendar days *after endorsement*, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the department of justice, which shall file

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the *application* upon receipt. *A* certificate of ownership may *not* be issued by the department of justice until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. The county treasurer shall collect a fee of $3 for each application for transfer of ownership, of which $2 shall be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of 23-2-601 through 23-2-644 or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, certificate of registration, and a decal during the 20-day period. During this period the sticker, provided for in subsection (4), shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the department of justice). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) of this section do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every dealer, upon transferring *his* interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of 23-2-601 through 23-2-644. The department of justice, upon receipt of the certificate of ownership and application for a new certificate, containing notice of a security interest, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien."

Section 3. Section 61-3-201, MCA, is amended to read:

**"61-3-201. Transfer of interest.** (1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for *the* vehicle in the appropriate space provided upon the reverse side of the certificate, and *the* signature shall be acknowledged before *the county treasurer, a deputy county treasurer, or* a notary public.

(2) Within 20 calendar days *after endorsement*, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. *A* certificate of ownership or certificate of registration may *not* be issued by the department until the

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outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The penalty is to be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. If the transferee has not made application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required for an original application for a certificate of ownership, together with a verified or certified statement of the transfer of interest. The statement shall set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting *the* transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases shall be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days *after sending notice*, shall issue a new certificate of ownership and certificate of registration to the *transferee*. The notice required *in this section* is complied with by deposit in the post office in Deer Lodge, Montana, *of the* notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure set forth *in subsection (3)* must be followed in applying for a new certificate of ownership and certificate of registration but the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled *to them.*

(5) (a) In the event of the death of the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered *under this chapter* and not exceeding a combined value of $15,000 without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless *the* property is by will

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otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary to entitle the affiant to a transfer.

(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a) of this section.

(6) Nothing in subsection (5) shall prevent any secured party from assigning his interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of his security interest in any motor vehicle registered under this chapter, a copy of *the* assignment must be filed with the department and *a* record *of the assignment* made upon its records.

(7) The *certificate* of ownership *is* valid until canceled by the department upon a transfer of any interest shown *in the certificate* and need not be renewed annually."

Section 4. Section 61-3-205, MCA, is amended to read:

**"61-3-205. Transfer of ownership of vehicles by insurance company.** (1) When an insurance company or its adjuster has taken possession of a motor vehicle as a result of settling an insurance claim and transfers ownership of the motor vehicle, it shall deliver to the transferee at the time of transfer a certificate of ownership *signed and acknowledged before the county treasurer, a deputy county treasurer, or a notary public.*

(2) If the certificate of ownership names one or more holders of a perfected security interest in the motor vehicle, the insurance company or its adjuster shall also secure and deliver to the transferee a release from the secured party of the security interest."

Section 5. Section 61-3-322, MCA, is amended to read:

**"61-3-322. Certificates of registration — issuance.** (1) Upon completion of the application for registration on forms furnished by the department, the county treasurer shall file one copy in his office and issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Payment Receipt", one of which shall be marked "file copy".

(2) The certificate of registration shall contain upon the face thereof the information described in 61-3-202(2).

(3) Every owner, upon receiving a registration receipt, shall write his signature *on the receipt* with pen and ink in the space provided. *The* registration receipt, *a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer,* a notarized photostatic copy, or a

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duplicate furnished by the department shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of *the* vehicle, who shall display it upon demand of a police officer or any officer or employee of the department or the highway department.

(4) The county treasurer shall daily forward to the department one copy of all applications for registration received that day.

(5) It *is* not necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt."

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1989.

# CHAPTER NO. 364

[HB 448]

AN ACT TO AUTHORIZE POSSESSION OF ANTIQUE SLOT MACHINES WHICH ARE MORE THAN 25 YEARS OLD; AND AMENDING SECTION 23-5-104, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-104, MCA, is amended to read:

**"23-5-104. Slot machines — possession unlawful — exception.** (1) Except as provided in subsections (2) through (5), it *is* a misdemeanor and punishable as provided *in 23-5-105* for any person to use, possess, operate, keep, or maintain for use or operation or otherwise, anywhere within the state of Montana, any slot machine of any sort or kind.

(2) The provisions of subsection (1) and 23-5-121 do not apply to antique slot machines possessed, located, and used in accordance with subsections (2) through (5). For the purposes of subsections (2) through (5), an antique slot machine is a *mechanically or electronically operated* slot machine *that at any present time is more than 25 years old.*

(3) Except as provided in subsection (4), antique slot machines may be possessed, located, and operated only in a private residential dwelling.

(4) Antique slot machines may be possessed or located for purposes of display only and not for operation in any public museum owned and operated by the state of Montana, or a county, or a city.

(5) *An* antique slot machine may *not* be operated for any commercial or charitable purpose."

Approved March 29, 1989.

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# CHAPTER NO. 365

[HB 491]

AN ACT TO REQUIRE THAT THE COURT CONSIDER THE EFFECT ON THE STABILITY AND CONTINUITY OF A CHILD'S EDUCATION IN ADDITION TO FACTORS RELEVANT TO THE BEST INTEREST OF THE CHILD WHEN THE COURT ALLOTS TIME BETWEEN PARENTS WITH JOINT CUSTODY; AND AMENDING SECTION 40-4-224, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4-224, MCA, is amended to read:

**"40-4-224. Joint custody — modification — consultation with professionals.** (1) Upon application of either parent or both parents for joint custody, the court shall presume joint custody is in the best interest of a minor child unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interest of the minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody. Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interest of a child, nor is a finding that the parents are hostile to each other. However, a finding that one parent physically abused the other parent or the child is a sufficient basis for finding that joint custody is not in the best interest of the child.

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the physical custody and residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing contact with both parents. The allotment of time between *the parents must* be as equal as possible; however:

*(a)* each case shall be determined according to its own practicalities, with the best interest of the child as the primary consideration; *and*

*(b) when allotting time between the parents, the court shall consider the effect of the time allotment on the stability and continuity of the child's education.*

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody."

Approved March 29, 1989.

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# CHAPTER NO. 366

[HB 558]

AN ACT TO PROVIDE A CIVIL REMEDY FOR PRESENTATION OF A FALSE, FICTITIOUS, OR FRAUDULENT CLAIM FOR PAYMENT TO ANY CITY OR TOWN; AND PROVIDING FOR THE FORFEITURE OF THE CLAIM AND A PENALTY NOT TO EXCEED $2,000 PLUS DOUBLE THE DAMAGES SUSTAINED BY THE CITY OR TOWN.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Liability for false claims.** (1) A person who knowingly presents or causes to be presented a false, fictitious, or fraudulent claim for allowance or payment to any city or town or its contractors forfeits the claim, including any portion that may be legitimate, and in addition is subject to a penalty of not to exceed $2,000 plus double the damages sustained by the city or town as a result of the false claim, including all legal costs.

(2) The forfeiture and the penalty may be claimed in the same suit.

Approved March 29, 1989.

# CHAPTER NO. 367

[HB 646]

AN ACT CLARIFYING THAT A SCHOOL LIBRARY MAY INCLUDE THE BIBLE AND OTHER RELIGIOUS MATERIAL OF CULTURAL, HISTORICAL, OR EDUCATIONAL VALUE; AMENDING SECTION 20-7-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-7-112, MCA, is amended to read:

**"20-7-112. Sectarian publications prohibited and prayer permitted.** *A* publication of a sectarian or denominational character *may not* be distributed in any school. Instruction *may* not be given *advocating* sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer. *This section does not prohibit a school library from including the Bible or other religious material having cultural, historical, or educational significance.*"

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1989.

## CHAPTER NO. 368

[HB 662]

AN ACT TO COORDINATE AND REVISE THE FEES AND CONDITIONS FOR SENIOR CITIZEN AND DISABLED DISCOUNTS; AMENDING SECTION 23-1-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-1-105, MCA, is amended to read:

"**23-1-105. Fees and charges.** (1) The department shall have power to levy and collect reasonable fees or other charges for the use of privileges and conveniences as may be provided and to grant concessions as it *considers* advisable, except as provided in *subsection* (2). All *money* derived from the activities of the department shall be deposited in the state treasury in a state special revenue fund to the credit of the department.

*(2) Overnight camping* fees established by the department under subsection (1) *must be discounted 50%* for *a campsite rented by* a person who is a resident of Montana *as defined in 87-2-102 and either 62 years of age or older or* certified as disabled in accordance with rules adopted by the department."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1989.

## CHAPTER NO. 369

[HB 670]

AN ACT REVISING THE QUALIFICATIONS REQUIRED FOR A MASTER PLUMBER'S LICENSE; AND AMENDING SECTION 37-69-305, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-69-305, MCA, is amended to read:

"**37-69-305. Qualifications of applicants for master plumber's license — restriction on authority.** (1) The following requirements *must* be met by an applicant for a master *plumber's* license:

(a) evidence of 4 years' experience as a *licensed* journeyman plumber in the field of plumbing, *verified by time or pay records of actual plumbing experience*;

(b) evidence of 3 years' experience *working with a licensed master plumber or* in *a* supervisory *capacity* in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); *and*

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

*(2) For purposes of subsection (1), a year's experience is 1,500 hours or more of work in a continuous 12-month period.*

*(3)* A master plumber *may* not allow his license to be used by any person or firm, corporation, or business other than his own for the purpose of obtaining permits or for doing plumbing work under his license."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 29, 1989.

## CHAPTER NO. 370

[HB 708]

AN ACT REMOVING THE REQUIREMENT THAT A STATE AGENCY DISTRIBUTE AN ANNUAL REPORT TO THE GOVERNOR; AMENDING SECTIONS 39-51-303 AND 39-73-102, MCA; AND REPEALING SECTIONS 39-71-210, 49-3-302, AND 53-4-217, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-303, MCA, is amended to read:

**"39-51-303. Publication and distribution of materials.** The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general and special rules, and any other material the department *considers* relevant and suitable and shall furnish the same to any person upon application."

Section 2. Section 39-73-102, MCA, is amended to read:

**"39-73-102. Administration — duties of division.** The division of workers' compensation shall administer this chapter. The division shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

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*(3)* designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

*(4)* designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

*(5)* pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the division for that purpose;

*(6)* develop and cooperate with other agencies in developing measures for the prevention of silicosis."

Section 3. **Repealer.** Sections 39-71-210, 49-3-302, and 53-4-217, MCA, are repealed.

Approved March 29, 1989.

# CHAPTER NO. 371

[SB 62]

AN ACT TO AUTHORIZE THE DEPARTMENT OF HIGHWAYS TO ADOPT RULES IMPLEMENTING VEHICLE SIZE AND WEIGHT, LICENSING REQUIREMENTS, AND SPECIAL PERMITS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the department of highways to implement, interpret, and carry out MCA provisions relating to vehicle size and weight, licensing requirements, and special permits.

The legislature intends that the department have discretion to adopt rules or to amend existing rules in a manner that will promote the enforcement of provisions regulating vehicles pursuant to Title 61, chapter 10. It is intended that the department, with its expertise and experience in the administration and enforcement of gross vehicle weight laws, supplement the statutory provisions with enforceable rules necessary to further the administration and regulation of vehicles under chapter 10.

It is contemplated that the rules supplement and interpret the provisions of chapter 10 by, among other things, providing:

(1) guidance and direction for the administration and collection of gross vehicle weight fees;

(2) implementation and regulation of the permit systems authorized by statute; and

(3) regulation of the movement of vehicles with oversize or overweight loads for the purposes of ensuring highway safety and protecting the state highway system.

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The legislature intends this rulemaking authority to apply to the existing provisions of chapter 10 as well as to any legislation passed in this session amending chapter 10.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Rulemaking authority.** The department of highways may adopt and enforce rules to implement this chapter.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 10, and the provisions of Title 61, chapter 10, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1989.

# CHAPTER NO. 372

[SB 68]

AN ACT TO AUTHORIZE COUNTIES TO SET FEES OF THE SHERIFF FOR SERVICES IN CIVIL CASES; AMENDING SECTION 7-32-2141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Fees of sheriff to be fixed by resolution.** (1) The county governing body may annually, by resolution, fix the fees of the sheriff for services provided in 7-32-2141.

(2) Fees set under subsection (1) must be based upon the prevailing rate charged by private process servers in the county for similar services.

(3) Fees collected under this section must be paid and credited as provided in 7-32-2141.

Section 2. Section 7-32-2141, MCA, is amended to read:

**"7-32-2141. Fees of the sheriff.** (1) *For the services provided in subsections (1)(a) through (1)(n), the* sheriff shall receive the fees, *if any, set by the county governing body. If no fees have been set by the county governing body, the sheriff shall receive the following*:

(a) for the service of summons and complaint on each defendant, $5;

(b) for making a return of a summons for a person not found in the county, in addition to actual mileage traveled, $5;

(c) for levying and serving each writ of attachment of execution on real or personal property, $5;

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(d) for service of attachment on the body or order of arrest on each defendant, $5;

(e) for the service of affidavit, order, and undertaking in claim and delivery, $5;

(f) for serving a subpoena, $2.50 for each witness summoned;

(g) for serving writ of possession or restitution, $5;

(h) for trial of the right of property or damages, including all services except mileage, $7;

(i) for taking bond or undertaking in any case authorized by law, $5;

(j) for serving every notice, rule, or order, $5 for each person served;

(k) for copy of any writ, process, or other paper when demanded or required by law, 25 cents for each page;

(l) for posting notices and advertising any property for sale on execution or under any judgment or order of sale, exclusive of cost of publication, $5;

(m) for holding any sheriff's sale for personal or real property on execution or under any judgment or order of sale, $7.50;

(n) for cancellation or postponement of sheriff's sale, $5.

(2) All fees collected by the sheriff for the services provided in subsection (1) must be paid to the county treasurer as provided in subsection (1) of 7-4-2511 and the fees must be credited by the county treasurer to the sheriff's budget."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 4, part 25, and the provisions of Title 7, chapter 4, part 25, apply to [section 1].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1989.

# CHAPTER NO. 373

[SB 161]

AN ACT TO PROVIDE THAT A PURCHASER OF STATE-OWNED TIMBER SHALL POST A BOND EQUIVALENT TO THE POTENTIAL LOSS TO THE STATE, EXCEPT THAT THE BOND MUST BE IN AN AMOUNT EQUAL TO AT LEAST 5 PERCENT OF THE ESTIMATED VALUE OF THE TIMBER SOLD; AND AMENDING SECTION 77-5-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-5-202, MCA, is amended to read:

**"77-5-202. Agreement with purchaser — bond.** (1) Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the

approximate quantity to be cut by species, and the rate for each product of each species. The agreement shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling, and slash disposal and such other rules as in the discretion of the board are essential to the perpetuation of the state forests.

(2) *(a) Except as provided in subsection (2)(b), as* a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient sureties, to the state of Montana, in an amount equal to *the potential loss to the state, as determined by the department.*

*(b) The bond required under this section must be in an amount equal to at least 5% of the estimated value of the timber sold."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 29, 1989.

# CHAPTER NO. 374

[SB 242]

AN ACT TO REVISE THE RELOCATION ASSISTANCE LAWS AND THE RIGHTS AND DUTIES RELATING TO PROPERTY ACQUISITION TO AUTHORIZE AGENCIES TO COMPLY WITH THE REQUIREMENTS OF THE FEDERAL UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT, AS AMENDED; AMENDING SECTIONS 70-31-101, 70-31-102, AND 70-31-301, MCA; REPEALING SECTIONS 60-4-301 THROUGH 60-4-310 AND 70-31-201 THROUGH 70-31-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to agencies as defined in 2-3-102, to adopt rules to carry out the provisions of [this act].

The legislature intends that the agency have the discretion to adopt whatever rules are necessary to ensure compliance with the federal requirements in order to obtain the maximum federal benefits for displaced persons in Montana. It is intended that the agency adopt rules relating to eligibility for relocation payments and assistance, type and amounts of payments available to displaced persons, and relocation assistance advisory services.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-31-101, MCA, is amended to read:

**"70-31-101. Purpose.** It is the purpose of this chapter to:

(1) provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of federally assisted programs;

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(2) establish uniform and equitable land acquisition policies for federally assisted programs; and

(3) comply with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, *as amended.*"

Section 2. Section 70-31-102, MCA, is amended to read:

**"70-31-102. Definitions.** As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Agency" means *any department, agency, or instrumentality of* the state of Montana *or of* a political subdivision of the state, any department, agency, or instrumentality of *two or more states or two or more political subdivisions of* the state or of *two or more states, and any person who has the authority to acquire property by eminent domain under* state *law.*

*(2) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser, setting forth an opinion of defined value of an adequately described property as of a specified date and supported by the presentation and analysis of relevant market information.*

*(3)* "Average annual net earnings" means one-half of any net earnings of a business or farm operation, before federal and state income taxes, during the 2 taxable years immediately preceding the taxable year in which *the* business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during *any* other period *that* the acquiring agency determines to be more equitable for establishing earnings and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during *the* period.

*(4)* "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease, and rental of personal and real property and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purposes of *paying moving or related expenses,* for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not *the* display or displays are located on the premises on which any of the above activities are conducted.

*(5)* "Displaced person" means:

*(a)* any person who moves from real property or moves his personal property from real property:

*(i)* as a *direct* result of *a written notice of intent to acquire or by* the acquisition of *the* real property, in whole or in part, for a program or

project undertaken by *a displacing* agency *for which federal financial assistance will be available to pay all or any part of the cost; or*

*(ii) on which he is a residential tenant or conducts a small business, farm operation, or a business defined in subsection (4)(d), as a direct result of rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent and* for which federal financial assistance will be available to pay all or any part of the cost;

*(b) any person who, for* purposes of *providing moving and related expenses or relocation advisory services only, moves from real property or moves his personal property from real property* as a *direct* result of:

*(i) a written notice of intent to acquire or as a direct result of* the acquisition of other real property, *in whole or in part,* on which *the* person conducts a business or farm operation, for *a* program or project *undertaken by a displacing agency; or*

*(ii) the rehabilitation, demolition, or other displacing activity prescribed by the agency under a program or project undertaken by a displacing agency that has determined that the displacement is permanent.*

*(c)* The term "displaced person" *does not include* a person who:

*(i) has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have been occupying the dwelling for the purpose of obtaining assistance under this part; or*

*(ii) occupies property owned by the agency on a short-term rental basis or a period subject to termination when property is needed for the program or project and who was not an occupant of the property at the time it was acquired by the agency.*

*(6)* "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

*(7)* "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" or as that act may be amended.

*(8)* "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any federal guarantee or insurance.

*(9)* "Person" means any individual, partnership, corporation, or association."

Section 3. **Relocation payments and assistance.** For any project that results in the displacement of a person from his home, business, or farm and for which federal financial assistance may be available to pay all or any part of the cost of displacement, an entity of the state or any public or private entity that has the authority to acquire property by eminent domain under state law is authorized to provide relocation assistance and

to make relocation payments to the full extent permitted by the federal relocation assistance law, 42 U.S.C. 4601, et seq., as amended. The entity is authorized to do what may be necessary or required to obtain for property owners the full benefit of federal relocation assistance, including the adoption of methods of administration as may be required by federal law or rules to carry out the operation of relocation assistance.

Section 4. **Rulemaking authority.** An agency, as defined in 2-3-102, is authorized to adopt necessary rules to implement this chapter.

Section 5. Section 70-31-301, MCA, is amended to read:

**"70-31-301. Appraisal, negotiation, and other condemnation policies mandated.** An agency which acquires real property for a program or project (for which federal financial assistance will be available to pay all or any part of the cost of such program or project) shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property. *The head of the agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.*

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of and summary of the basis for the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a program or project (for which federal financial assistance will be available to pay all or any part of the cost of the program or project) shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be

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required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the *uneconomic remnant* shall be made.

*(10) A person whose real property is being acquired may, after being fully informed of his right to receive just compensation, donate to an agency the property, any interest in the property, or any compensation received for the property.*"

Section 6. **Repealer.** Sections 60-4-301 through 60-4-310 and 70-31-201 through 70-31-207, MCA, are repealed.

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 70, chapter 31, and the provisions of Title 70, chapter 31, apply to [sections 3 and 4].

Section 9. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1989.

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# CHAPTER NO. 375

[SB 250]

AN ACT PROVIDING FOR THE INVOLUNTARY TRANSFER OF TITLE FOR BOATS AND SNOWMOBILES; PROVIDING FOR PRESUMPTION OF JOINT OWNERSHIP OF BOATS AND SNOWMOBILES; AND AMENDING SECTIONS 23-2-510 AND 23-2-612, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-510, MCA, is amended to read:

"**23-2-510. (Effective July 1, 1988) Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and *the* signature must be acknowledged before a notary public.

(2) Within 20 calendar days *after endorsement*, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the certificate upon receipt. *A* certificate of ownership may *not* be issued by the department until any outstanding certificate is surrendered to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $6 for each application for transfer of ownership, of which $4 must be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 20 calendar days from the date of purchase to register the motorboat or sailboat, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the vessel for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the 20-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or sailboat constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The

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dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a duly licensed dealer intending to resell the motorboat or sailboat and who operates it only for demonstration purposes, but every dealer, upon transferring *his* interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

*(6) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.*

*(7) The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to any certificate of ownership transferred under this section."*

Section 2. Section 23-2-612, MCA, is amended to read:

**"23-2-612. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of 23-2-601 through 23-2-644, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and *the* signature shall be acknowledged before a notary public.

(2) Within 20 calendar days *after endorsement*, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the department of justice, which shall file the *certificate* upon receipt. *A* certificate of ownership may *not* be issued by the department of justice until the outstanding certificates are surrendered to that office or their loss *is* established to its reasonable satisfaction. The county treasurer shall collect a fee of $3 for each application for transfer of ownership, of which $2 *must* be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of 23-2-601 through 23-2-644 or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, certificate

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of registration, and a decal during the 20-day period. During this period the sticker provided for in subsection (4) shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the department of justice). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) of this section do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every dealer, upon transferring *his* interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of 23-2-601 through 23-2-644. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien.

*(6) When the names and addresses of more than one owner who are members of the same immediate family are listed on the certificate of ownership, joint ownership with right of survivorship, and not as tenants in common, is presumed.*

*(7) The provisions of 61-3-201(3) through (7) that apply to motor vehicles also apply to any certificate of ownership transferred under this section."*

Approved March 29, 1989.

# CHAPTER NO. 376

[SB 260]

AN ACT REVISING THE LAWS RELATING TO THE INTRODUCTION, PROLIFERATION, AND SPREAD OF UNDESIRABLE FISH SPECIES AND FISH PATHOGENS; REGULATING THE INTRASTATE MOVEMENT OF DISEASED FISH OR EGGS; REQUIRING PERMITS FOR IMPORTATION OF SALMONID AND NONSALMONID FISH OR EGGS; PROVIDING FOR INSPECTION OF FISH HATCHERIES AND CULTURE FACILITIES; ESTABLISHING A DUTY TO REPORT FISH PATHOGENS; REVISING FISH POND LICENSE REGULATIONS; AMENDING SECTIONS 87-3-221, 87-3-222, 87-3-224, 87-4-603, 87-5-703, AND 87-5-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR RULEMAKING AUTHORITY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-3-221, MCA, is amended to read:

**"87-3-221. Importation of salmonid fish or eggs unlawful — exception — certification — permit.** *(1)* It is unlawful to bring live or

dead salmonid fish or eggs into the state of Montana for any purpose unless *the* importations are shipped direct from the *source* to destination and a written certification that the source is free of *all fish pathogens specified by* the department *as posing a threat to existing fisheries accompanies the shipment. Certification must* be made by a fish pathologist *approved by the* director. Certification of the source may be by inspection conducted annually or at such other times as the director may order.

*(2) In addition to the certification required in subsection (1), all importations of live salmonid fish or eggs must be accompanied by a permit issued by the department. The department shall issue an import permit upon application to the department showing that the proposed importations present no substantial threat to the health of state fisheries. The department may condition the permit as necessary to protect fisheries from the introduction and spread of pathogens. Import permits apply to all importations from specified and certified species and sources by a permittee until January 31 of the year succeeding the year of issuance, when the permit expires. However, a separate permit is required for importations by a permittee for species or from sources unspecified in his other permit or permits. It is unlawful to import live salmonid fish or eggs into Montana without first obtaining the permit required by this subsection or to violate any conditions of the permit."*

Section 2. **Intrastate movement of diseased fish or eggs unlawful.** It is unlawful to move live or dead salmonid fish or eggs from one in-state location to another when the fish or eggs are known to be infected with fish pathogens specified by the department as posing a threat to fisheries without written department approval.

Section 3. Section 87-3-222, MCA, is amended to read:

**"87-3-222. When certification unnecessary.** (1) Nothing in 87-3-221 through 87-3-224 *or [section 2] may* restrict the importation and transportation of dead salmonid fish or eggs when *the* fish or eggs have been processed or prepared in a manner *that kills those fish pathogens specified by* the department *as posing a threat to fisheries.*

(2) *Dead salmonid fish or eggs* transported into Montana for processing or caught wild *are* exempt from the requirement for certification. *However, it is unlawful to discard, place, or allow uncertified salmonid fish, parts, or eggs that have been transported into Montana to enter into surface waters other than sewage or disposal systems."*

Section 4. **Permit required for importation of nonsalmonid fish or eggs.** Except when intended for use in home or office aquariums, importations of live nonsalmonid fish or eggs must be accompanied by a permit as described for salmonids in 87-3-221(2). The permit may require that the importation be inspected and approved by a department biologist prior to release or placement.

Section 5. Section 87-3-224, MCA, is amended to read:

**"87-3-224. Enforcement.** The cargo and vehicle involved in a violation of 87-3-221 through 87-3-223 *or [sections 2 and 4]* may, at the option of the department, either be denied the right to proceed further within the

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state of Montana or be quarantined until inspected by a designated biologist from the department. The department shall inform the department of highways of the provisions regarding importation of salmonid *and nonsalmonid* fish and eggs so that the department of highways may enforce *the* provisions at ports of entry and checking stations under 60-2-303."

Section 6. **Inspection, quarantine, and disinfection of fish hatcheries and culture facilities.** (1) The department may conduct inspections for the presence of fish pathogens at any fish hatchery or culture facility. Inspections may be conducted at the request of the hatchery or facility or by order of the department. The expense of inspection must be paid by the hatchery or facility requesting the inspection or by the department when the inspection is ordered by the department.

(2) When a fish hatchery or culture facility is found to be contaminated or to contain fish or eggs infected with specified fish pathogens, the department may order appropriate action, including quarantine, destruction of infected fish or eggs, or disinfection of all or part of the hatchery or facility. An order for destruction of infected fish or eggs may not be issued unless the infection is confirmed by two laboratories. The owner of the hatchery or facility is liable for all costs and expenses associated with the cleanup and the disposition of infected fish or eggs. When destruction of eggs is ordered at a private facility and the department has surplus eggs available, the department may replace the destroyed eggs without charge to the private facility.

Section 7. **Duty to report fish pathogens.** A person, including the owner or custodian of a fish hatchery or culture facility, who has reason to suspect the presence of fish pathogens specified by the department as posing a threat to existing fisheries shall immediately give notice to the department.

Section 8. **Civil liability.** A person, firm, or corporation that violates any provision of this part pertaining to fish disease or rules or orders of the department is liable for damages caused by the violation. The damages may be recovered by the person, firm, or corporation damaged or by the department on behalf of the public in a civil action in a court of competent jurisdiction. All money collected by the department under this section must be deposited in the state special revenue fund as provided in 87-1-601(1).

Section 9. Section 87-4-603, MCA, is amended to read:

**"87-4-603. Fish pond license for artificial lake or pond — records.** (1) A person who owns or lawfully controls an artificial lake or pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock his fish pond with fry procured from any lawful source. The department may designate the species of fish which may be released in the pond *and otherwise condition the license* when there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, he shall furnish a corporate surety bond to the state for $500, conditioned to the effect that he will not sell fish or spawn from any of the public

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waters of this state *or violate the conditions of his license* and also conditioned to the effect that he will *submit an annual* report *on transactions* to the director.

(2) "Artificial lake or pond" as used in this section does not include a natural pond or body of water created by natural means or any portion of the streambed or lakebed *of a natural pond or body of water.* It includes only bodies of water created by artificial means or diversion of water which do not exceed 500 acres of surface area.

*(3) The department may condition the license to require the construction, implementation, and maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent waters.*

*(4) (a) Each licensee who sells fish or eggs shall keep accurate records of:*

*(i) the species and quantities of fish or eggs sold or purchased;*

*(ii) dates of sales or purchases;*

*(iii) names of purchasers or sellers; and*

*(iv) locations to or from which fish or eggs are transferred.*

*(b) On or before January 31 of each year, each licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection (4)(a)."*

Section 10. **Term of license — license not transferable.** (1) A licensee who sells fish or eggs under 87-4-603 shall renew the license annually. The license expires on January 31 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license if the licensee has not violated any condition upon which the license was granted.

(2) A licensee who does not sell fish or eggs is not required to renew his license. However, a new license is required when a licensee proposes to plant a new species or stock a pond not designated in the original license.

(3) A fish pond license granted under 87-4-603 is not transferable.

Section 11. **Revocation of fish pond license.** (1) A fish pond license may be revoked for failure to operate or use the pond according to the terms or conditions of the license or state statutes, rules, or orders covering importation, transportation, or introduction of fish or eggs.

(2) If the department discovers a violation under this section, it may institute revocation proceedings after providing reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of the violation, the department may revoke the fish pond license.

Section 12. Section 87-5-715, MCA, is amended to read:

**"87-5-715. Extermination or control of transplanted or introduced wildlife or feral species posing threat.** *Any* wildlife or feral species transplanted or introduced in the state may be exterminated or

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controlled by the department if the commission determines that the species poses harm to native wildlife or plants or to agricultural production."

Section 13. Section 87-5-703, MCA, is amended to read:

**"87-5-703. Applicability to other provisions for importation or introduction of wildlife.** Sections 87-5-701 through 87-5-704, 87-5-711, 87-5-713 through 87-5-716, and 87-5-721 do not apply to the importation of wildlife for the commercial pet trade or to the provisions on importation or introduction of wildlife contained in the following laws:

(1) Title 80;

(2) 87-3-207 and 87-3-208;

(3) 87-3-221 through 87-3-224 *or [sections 2, 4, and 6 through 8]*;

(4) 87-4-422;

(5) 87-5-112;

(6) 87-5-205;

(7) 87-5-302; or

(8) Title 81, chapter 2."

Section 14. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 15. **Codification instruction.** (1) [Sections 2, 4, and 6 through 8] are intended to be codified as an integral part of Title 87, chapter 3, part 2, and the provisions of Title 87, chapter 3, part 2, apply to [sections 2, 4, and 6 through 8].

(2) [Sections 10 and 11] are intended to be codified as an integral part of Title 87, chapter 4, part 6, and the provisions of Title 87, chapter 4, part 6, apply to [sections 10 and 11].

Section 16. **Effective date.** [Section 14 and this section] are effective on passage and approval.

Approved March 29, 1989.

# CHAPTER NO. 377

[SB 340]

AN ACT TO REVISE AND CONTINUE THE CERTIFICATE OF NEED LAWS; TO EXEMPT HOSPITALS FROM CERTIFICATE OF NEED REQUIREMENTS IN CERTAIN CIRCUMSTANCES; AMENDING SECTION 50-5-301, MCA; SECTION 13, CHAPTER 329, LAWS OF 1983; AND SECTION 9, CHAPTER 477, LAWS OF 1987; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

It is the legislature's intent to exclude acute care hospitals from certificate of need requirements, except in certain limited circumstances that are

enumerated in subsections 50-5-301(1)(h) and 50-5-301(1)(i). The provision by a hospital of services under either of those subsections is intended to include construction, conversion, or expansion of bed capacity.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-5-301, MCA, is amended to read:

**"50-5-301. (Temporary) When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

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(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility which is being replaced or which did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; *or*

*(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, inpatient rehabilitation, or personal care.*

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, or personal care facility. *The term does not include a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i).*

(b) (i) "Long-term care facility" means an entity which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more persons.

(ii) The term does not include adult foster care licensed under 53-5-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for physically disabled persons, licensed under 53-19-111; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of institutions.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who

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need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection *(3)*(b).

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000."

Section 2. Section 13, Chapter 329, Laws of 1983, is amended to read:

"Section 13. **Effective dates.** (1) This act is effective on passage and approval, with delayed effective dates.

(2) On July 1, *1991*, 50-5-301, 50-5-302, and 50-5-304 through *50-5-310*, MCA, and *section 9* hereof are repealed unless reenacted by the legislature.

(3) On July 1, *1991*, 50-5-101, MCA, is amended by deleting subsections (3), (5), (6), (8) *through* (10), (14), *(15)*, and *(28)* unless reenacted by the legislature.

(4) On July 1, *1991*, 50-5-106, MCA, is amended to read as follows, unless reenacted by the legislature:

**"50-5-106. Records and reports required of health care facilities — confidentiality.** Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state.""

Section 3. Section 9, Chapter 477, Laws of 1987, is amended to read:

"Section 9. Section 13, Chapter 329, Laws of 1983, is amended to read:

"Section 13. **Effective dates.** (1) This act is effective on passage and approval, with delayed effective dates.

(2) On July 1, *1991*, 50-5-301, 50-5-302, and 50-5-304 through *50-5-310*, MCA, and section 9 hereof are repealed unless reenacted by the legislature.

(3) On July 1, *1991*, 50-5-101, MCA, is amended by deleting subsections (3), (5), (6), (8) through (10), (14), (15), and (28) unless reenacted by the legislature.

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(4) On July 1, *1991*, 50-5-106, MCA, is amended to read as follows, unless reenacted by the legislature:

**"50-5-106. Records and reports required of health care facilities — confidentiality.** Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state."""

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** [This act] is effective June 30, 1989.

Approved March 29, 1989.

# CHAPTER NO. 378

[SB 355]

AN ACT GOVERNING THE ISSUANCE AND USE OF COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENTS AND BRINGING MONTANA STATUTES INTO COMPLIANCE WITH FEDERAL REGULATIONS; PROVIDING FOR SUSPENSION OF COMMERCIAL MOTOR VEHICLE OPERATOR'S ENDORSEMENTS; PROVIDING FOR CERTAIN CHEMICAL TESTS; PROVIDING FOR APPEAL; REMOVING A METHOD TO OBTAIN A HAZARDOUS MATERIAL ENDORSEMENT; AND AMENDING SECTIONS 61-1-134, 61-5-103, 61-5-111, 61-5-204, 61-5-208, AND 61-8-405, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** (1) The purpose of [this act] is to reduce the number of commercial motor vehicle accidents in Montana, to provide greater safety to the motoring public and others by establishing stringent

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criteria governing the operation of commercial motor vehicles, and to deny the privilege of operating commercial motor vehicles upon the public streets and highways to those commercial motor vehicle operators who are determined to be not qualified.

(2) To fulfill this purpose, the legislature intends that [sections 1 through 8]:

(a) establish criteria and procedures for the operation of commercial motor vehicles that require safety practices commensurate with the danger inherent to their operation;

(b) provide for increased administrative punishment for commercial motor vehicle operators who use alcohol while operating commercial motor vehicles;

(c) provide greater control of commercial motor vehicle operators using the streets and highways; and

(d) conform Montana's laws on commercial motor vehicle operator's endorsements with federal regulations based on Public Law 99-570, "Commercial Motor Vehicle Safety Act of 1986".

Section 2. **Suspension of commercial vehicle operator's endorsement — disqualification.** (1) The department shall suspend the commercial vehicle operator's endorsement of any commercial operator if the department's records or information received from federal authorities shows that the person is disqualified under federal law.

(2) A commercial vehicle operator's endorsement suspended pursuant to this section remains suspended for the duration of the period of disqualification under federal regulations.

(3) A person whose commercial vehicle operator's endorsement is suspended under this section due to disqualification:

(a) may appeal the suspension as provided in 61-5-211; and

(b) may not operate a commercial vehicle until the suspension is lifted and his commercial vehicle operator's endorsement is restored.

Section 3. **Suspension of commercial vehicle operator's endorsement — serious traffic violations.** If a commercial motor vehicle operator's record shows that he has been convicted of a serious traffic violation as defined in federal regulations, the department shall suspend the commercial vehicle operator's endorsement:

(1) for 60 days if the operator was convicted of two hazardous moving violations within 3 years; or

(2) for 120 days if the operator was convicted of three hazardous moving violations within 3 years.

Section 4. **Suspension of commercial vehicle operator's endorsement — felony involving a controlled substance while driving a commercial vehicle.** If the department receives information that a commercial motor vehicle operator has been convicted of using a commercial

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motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by federal regulations, or a felony involving possession with intent to manufacture, distribute, or dispense a controlled substance, the department shall suspend his commercial vehicle operator's endorsement for life.

Section 5. **Suspension for operating a commercial vehicle with a blood alcohol concentration of 0.04 or more — hearing.** (1) A person whose blood alcohol concentration is 0.04 or more while he drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of his commercial vehicle operator's endorsement. If the department receives a sworn report from a peace officer that the person was operating a commercial motor vehicle while his blood alcohol concentration was 0.04 or more, the department shall suspend the driver's commercial vehicle operator's endorsement:

(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension must be for 3 years; and

(b) for 10 years, with no provision for a restricted probationary license or endorsement, upon receipt of a second or subsequent report at any time as determined from the records of the department.

(2) A peace officer who determines that a commercial motor vehicle operator's blood alcohol concentration is 0.04 or more shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions of subsection (1).

(4) The department shall immediately notify in writing any person whose commercial vehicle operator's endorsement is suspended under this section. The person suspended has the right to file a petition within 30 days after the notice is given for a hearing in the matter in the district court in the county in which the finding of blood alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while his blood alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section.

Section 6. **Chemical blood, breath, or urine tests of commercial vehicle operators — procedure — suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to the

public is considered to have given consent, subject to the provisions of 61-8-401 and [section 5], to a chemical test of his blood, breath, or urine for the purpose of determining the alcohol content of his blood if he is requested to submit to the test by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while his blood alcohol concentration was 0.04 or more. The peace officer may designate a blood, breath, or urine test to be administered.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a chemical test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer shall immediately seize the person's driver's license showing the commercial vehicle operator's endorsement and forward the license to the department, along with a sworn report that he had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having a blood alcohol concentration of 0.04 or more and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a resident's driver's license showing a commercial vehicle operator's endorsement, the peace officer shall issue, on behalf of the department, a temporary driving permit without the commercial vehicle operator's endorsement. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to a chemical test as provided in subsection (3), the department shall suspend his commercial vehicle operator's endorsement:

(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for 10 years, with no provision for a restricted probationary license or endorsement.

(6) A nonresident commercial motor vehicle operator who refuses to submit to a chemical test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and may receive a temporary driving permit as provided in subsection (4).

Section 7. **Right of appeal of court.** The department shall immediately notify in writing any person whose commercial vehicle operator's endorsement has been suspended under the provisions of [section 6], and the person may, within 30 days after receipt of notification, file a petition

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for a hearing on the matter in the district court in the county where the person resides or in the district court in the county where the finding of refusal was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while the person had a blood alcohol concentration of 0.04 or more, whether the person was ordered to submit to a test, and whether the person refused to submit to the test. The court shall determine whether the petitioner is entitled to a commercial vehicle operator's endorsement or is subject to suspension as provided in [sections 1 through 8].

Section 8. **Administration of tests.** (1) Tests required under [sections 1 through 8] must be administered as provided in 61-8-405.

(2) The department may authorize a private individual, institution, or corporation to administer required driving examinations that would otherwise be administered by the department if they have been officially trained and certified to conduct them by the department and the third party has entered into an agreement with the department that complies with the requirements of 49 C.F.R. part 383.75.

Section 9. Section 61-5-103, MCA, is amended to read:

**"61-5-103. Residency requirement.** *(1)* Any person who has resided in *Montana* for *more than* 90 days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must thereafter be licensed under the laws of *Montana* before operating a motor vehicle.

*(2) A person who operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if he has resided in Montana for more than 30 days and must thereafter be licensed under the laws of Montana before operating any commercial motor vehicle."*

Section 10. Section 61-5-111, MCA, is amended to read:

**"61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements.** (1) The department *has* authority to appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In those areas where the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue *a driver's license* to every *qualifying* applicant. The license shall contain a full-face photograph of the licensee in the size and form prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee

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or a space upon which he shall write his signature in pen and ink immediately upon receipt of the license. *A* license *is not* valid until it *is* signed by the licensee.

(2) *(a)* The department shall, when any person applies for renewal of a driver's license, test the applicant's eyesight and may also in the department's discretion have the applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle.

*(b) In the case of commercial vehicle operator's endorsements, the department may also require that the applicant successfully complete a written examination as required by federal regulations.*

*(c)* A person *is* considered to have applied for renewal of a Montana driver's license if the application is made within 3 months of the expiration of his license.

(3) *A license expires* on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) A license issued to a person under the age of 21 years must contain a photograph of the licensee's profile.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license shall be designated and clearly marked as a "provisional license". Any license designated and marked *as provisional* may be suspended by the department for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal the department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form *must* be issued subject to other provisions of the laws of Montana.

(6) It *is* unlawful for any person to have in his possession or under his control more than one Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle until the holder thereof has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial vehicle operator's endorsement".

(7) Fees for driver's licenses *are*:

(a) driver's license — $3 per year or fraction thereof;

(b) motorcycle endorsement — 50 cents per year or fraction thereof;

(c) commercial vehicle operator's endorsement:

(i) interstate — $3 per year or fraction thereof;

(ii) intrastate — $1.50 per year or fraction thereof.

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(8) A license designated as a chauffeur's license as of January 1, 1988, is valid as a commercial vehicle operator's endorsement until the expiration of the license.

(9) *The* holder of a chauffeur's license *may* convert his chauffeur's license to a commercial vehicle operator's endorsement by paying the appropriate fee covering the remainder of the life of his license and complying with the requirements established by the department.

(10) *The* holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial vehicle operator's endorsement may do so upon paying the appropriate fees and complying with the requirements established by the department."

Section 11. Section 61-1-134, MCA, is amended to read:

**"61-1-134. Commercial motor vehicle defined — exceptions.** (1) "Commercial motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

(a) has gross vehicle weight of 26,001 pounds or more;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used to transport hazardous material.

(2) Vehicles operated within the state of Montana *that* are registered as paying the 16% gross weight fee *under 61-10-206* are not commercial motor vehicles under this section.

*(3) Vehicles that are operated within the state of Montana by farmers or persons employed by farmers who are transporting farm products or farm supplies and that are operated within 150 miles of the farm headquarters are not considered commercial motor vehicles under this section.*"

Section 12. Section 61-5-204, MCA, is amended to read:

**"61-5-204. Suspending resident's license upon conviction in another state.** The department is authorized to suspend or revoke the driver's license and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of *the* person in another *jurisdiction* of an offense *in that jurisdiction* which, if committed in this state, would be grounds for the suspension or revocation of the driver's license or commercial vehicle operator's endorsement."

Section 13. Section 61-5-208, MCA, is amended to read:

**"61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke a driver's license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under 61-5-207, 61-5-212, 61-6-123, 61-11-211, *and [sections 3 through 5]*.

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(2) *A* person whose license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have *the* license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of *the* revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in *Montana*. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license, including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 1 year.

(3) The period for all revocations made mandatory by 61-5-205 *is* 1 year except as provided in subsection (2).

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or forfeiture of bail."

Section 14. Section 61-8-405, MCA, is amended to read:

**"61-8-405. Administration of tests.** (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining alcoholic content. This limitation *does* not apply to the taking of breath or urine specimens.

(2) The person tested may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person *does* not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning the test taken at the direction of the peace officer *must* be made available to him or his attorney.

(4) No physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

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(5) If the test given under 61-8-402 *or [section 6]* is a chemical test of urine, the person tested *must* be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The department of justice in cooperation with any appropriate agency shall adopt uniform rules for the giving of blood alcohol tests and may require certification of training to administer *the* tests as *considered* necessary."

Section 15. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 16. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 61, chapter 8, and the provisions of Title 61, chapter 8, apply to [sections 1 through 8].

Approved March 29, 1989.

# CHAPTER NO. 379

[SB 381]

AN ACT INCREASING THE ATTORNEYS LICENSE TAX; AMENDING SECTION 37-61-211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-61-211, MCA, is amended to read:

**"37-61-211. Annual license tax — municipal tax prohibited.** (1) Every attorney or counselor at law admitted by the supreme court of the state to practice his profession within the state *is* required to pay a license tax of *$25 a year. The* tax *is* payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of *the* tax, the clerk shall issue and deliver a certificate to the person paying the *tax*, certifying to the payment of *the* license tax and stating the period covered by *the* payment.

(3) *A* license tax *may not* be imposed upon attorneys by a municipality or any other subdivision of the state."

Section 2. **Effective date.** [This act] is effective January 1, 1990, and applies to license tax for years beginning after December 31, 1989.

Approved March 29, 1989.

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# CHAPTER NO. 380

[SB 382]

AN ACT TO PROVIDE IMMUNITY FROM LIABILITY FOR MEDICAL ETHICS REVIEW COMMITTEE MEMBERS; TO PROHIBIT THE DISCOVERY AND ADMISSION OF MEDICAL ETHICS REVIEW COMMITTEE PROCEEDINGS AND RECORDS; AND AMENDING SECTION 37-2-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-2-201, MCA, is amended to read:

**"37-2-201. Nonliability — evidential privilege — application to nonprofit corporations.** (1) No member of a utilization review *or medical ethics review* committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, *medical ethics review committee,* or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, *medical ethics review,* and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, *medical ethics review,* or professional standards review committee."

Approved March 29, 1989.

# CHAPTER NO. 381

[SB 386]

AN ACT ALLOWING THE LEGISLATURE TO REVISE THE STATE WATER PLAN; AND AMENDING SECTION 85-1-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-1-203, MCA, is amended to read:

**"85-1-203. State water plan.** (1) The department shall gather from any source reliable information relating to Montana's water resources and

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prepare *from the information* a continuing comprehensive inventory of the water resources of the state. In preparing this inventory, the department may conduct studies; adopt studies made by other competent water resource groups, including federal, regional, state, or private agencies; perform research or employ other competent agencies to perform research on a contract basis; and hold public hearings in affected areas at which all interested parties *must* be given an opportunity to appear.

(2) The department shall formulate and, with the approval of the board, adopt and amend, extend, or add to a comprehensive, coordinated multiple-use water resources plan known as the "state water plan". The state water plan may be formulated and adopted in sections, these sections corresponding with hydrologic divisions of the state. The state water plan *must* set out a progressive program for the conservation, development, and utilization of the state's water resources and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before *adopting* the state water plan or any section *of the plan*, the department shall hold public hearings in the state or in an area of the state encompassed by a section *of the plan* if adoption of a section is proposed. Notice of the hearing or hearings *must* be published for 2 consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section *of the plan* at least 30 days prior to the hearing.

(3) The department shall submit to the water policy committee established in 85-2-105 and to *the legislature at the beginning of* each *regular* session the state water plan or any section *of the plan* or amendments, additions, or revisions *to the plan that* the department has formulated and adopted.

(4) *The legislature, by joint resolution, may revise the state water plan.*

*(5)* The department shall prepare a continuing inventory of the groundwater resources of the state. The groundwater inventory *must* be included in the comprehensive water resources inventory described in subsection (1) but *must* be a separate component *of the inventory.*

*(6)* The department shall publish the comprehensive inventory, the state water plan, the groundwater inventory, or any part of each, and the department may assess and collect a reasonable charge for these publications.

*(7)* In developing and revising the state water plan as provided in this section, the department shall consult with the water policy committee established in 85-2-105 and solicit the advice of the committee in carrying out its duties under this section."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 29, 1989.

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# CHAPTER NO. 382

[SB 409]

AN ACT PROVIDING STAGGERED 5-YEAR TERMS FOR MEMBERS OF THE BOARD OF PUBLIC ACCOUNTANTS; DEFINING "PRACTICE OF PUBLIC ACCOUNTING"; INCREASING THE NUMBER OF CREDIT HOURS REQUIRED FOR LICENSURE AS A PUBLIC ACCOUNTANT; AMENDING SECTIONS 2-15-1866, 37-50-101, AND 37-50-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1866, MCA, is amended to read:

**"2-15-1866. Board of public accountants.** (1) There is a board of public accountants.

(2) The board consists of five members appointed by the governor. The members are:

(a) three certified public accountants certified under Title 37, chapter 50, who are certified and actively engaged in the practice of public accounting and who have held a valid certificate for at least 5 years before their appointment. The Montana society of certified public accountants shall submit to the governor annually a list of names of two candidates from which the appointments of these members may be made. However, the governor is not restricted to the names on this list. These members may not be residents of the same county.

(b) one licensed public accountant licensed under Title 37, chapter 50, who is actively engaged in the practice of public accounting and who has held a valid license for at least 5 years before his appointment. When an appointment in this category is necessary, the Montana society of public accountants shall submit to the governor a list of names of two candidates from which the appointment may be made. However, the governor is not restricted to the names on this list. If there is no licensed public accountant known by the governor to be qualified and willing to serve in this position, the governor may appoint a certified public accountant meeting the qualifications provided in (2)(a).

(c) one member of the general public who is not engaged in the practice of public accounting.

(3) Each appointment is subject to confirmation by the senate and shall be submitted for consideration at the next regular session following appointment.

(4) *The members* shall serve *staggered 5-year terms.* A member *may not serve consecutive 5-year terms on the board. A member is eligible for reappointment to the board after 1 year or more has elapsed.* The governor may, after a hearing, remove a member for neglect of duty or other just cause.

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(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-50-101, MCA, is amended to read:

**"37-50-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1866.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

*(3) "Practice of public accounting" means performing or offering to perform by a person certified under 37-50-302 or licensed under 37-50-303, for a client or potential client, one or more types of services involving the use of accounting or auditing skills, including:*

*(a) the issuance of reports or financial statements on which the public may rely;*

*(b) one or more types of management advisory or consulting services;*

*(c) the preparation of tax returns; or*

*(d) furnishing advice on tax matters."*

Section 3. Section 37-50-305, MCA, is amended to read:

**"37-50-305. Education requirements.** *(1) Prior to July 1, 1997, a* candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

*(a)* with a concentration in accounting; or

*(b)* with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.

*(2) Beginning July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:*

*(a) with an accounting concentration or its equivalent as determined by the board; and*

*(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent."*

Section 4. **Transition — initial appointments.** (1) The governor shall make appointments as necessary under this section.

(2) On July 1, 1989, the governor shall appoint a board member to a 5-year term.

(3) On July 1, 1990, the governor shall fill the vacancies by appointing one board member to a 5-year term and one board member to a 1-year

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term at the end of which the governor shall appoint the same board member to a 5-year term.

(4) On July 1, 1991, the governor shall appoint one board member to a 1-year term and one board member to a 2-year term. At the end of each of those terms the governor shall fill the vacancy by making an appointment for a term of 5 years.

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective July 1, 1989.

Approved March 29, 1989.

# CHAPTER NO. 383

[SB 439]

AN ACT REVISING THE CENTENNIAL COMMISSION'S RULEMAKING AUTHORITY; PROVIDING FOR AN AUDIT OF AN ENTITY RECEIVING A CENTENNIAL ENDORSEMENT OR GRANT; PROVIDING FOR CIVIL PENALTY OR INJUNCTION AGAINST AN ENTITY USING THE CENTENNIAL LOGO WITHOUT AUTHORIZATION OR MISREPRESENTING CENTENNIAL PRODUCTS; PROVIDING FOR DEPOSIT OF CENTENNIAL LICENSE PLATE FEES IN THE GENERAL FUND AFTER NOVEMBER 30, 1989; AMENDING SECTIONS 2-89-105, 2-89-106, 2-89-302, AND 2-89-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Civil penalty — injunction.** (1) An individual, partnership, corporation, or other entity may be fined an amount not to exceed $1,000 for violation of any of the provisions of subsections (1)(a) through (1)(c). Each day of violation constitutes a separate offense. Fines may be assessed for:

(a) using the centennial logo without authorization of the office;

(b) falsely representing any product, event, or service endorsed by the office; or

(c) falsely representing that the revenues from a product, event, or service benefit the office or any project endorsed or funded in whole or in part by the office.

(2) Upon request of the office, the attorney general shall institute and maintain in the name of the state an action to collect the fine imposed in subsection (1) in the district court in and for Lewis and Clark County or in the county of residence of the defendant.

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(3) Upon request of the office, the attorney general shall maintain an action for injunction to prevent:

(a) the unauthorized use of the centennial logo; or

(b) misrepresentation of an endorsement made by the office or of benefit to the office or any project endorsed or funded by the office.

Section 2. **Endorsement and grant audits.** An individual, partnership, corporation, or other entity that receives an endorsement or grant from the office shall allow the office, legislative fiscal analyst, legislative auditor, or their designated representative to audit its books at any reasonable time and at reasonable intervals to ensure compliance with the grant, endorsement, or licensing agreement.

Section 3. Section 2-89-105, MCA, is amended to read:

**"2-89-105. (Temporary) Powers and duties of office.** (1) The office shall:

(a) plan and coordinate statehood centennial activities;

(b) hold public hearings and meetings throughout the state and coordinate with similar organizations in other states;

(c) serve as a clearinghouse for centennial information and scheduling; and

(d) publish its goals and objectives to encourage public awareness of centennial activities.

(2) The office may:

(a) accept and expend grants, gifts, loans, and devises and use them for any lawful purpose in the furtherance of this part, subject to any restrictions by the grantor, lender, or devisor;

(b) contract with, grant, or regrant funds to any individual or organization, public or private, for activities in the furtherance of this part; and

(c) register trademarks, logos, symbols, and similar items for its own use and the use of other entities and for such use may require other entities to meet such conditions as the payment of a fee, *a* royalty, *or both.* **(Terminates June 30, 1991—sec. 8, Ch. 664, L. 1985.)"**

Section 4. Section 2-89-106, MCA, is amended to read:

**"2-89-106. (Temporary) Rulemaking authority.** *(1)* The office is authorized to adopt rules pursuant to Title 2, chapter 4:

*(a)* to establish criteria that will apply to endorsing centennial projects;

*(b)* to establish criteria that will apply in awarding grants to individuals and entities for activities in furtherance of centennial activities; and

*(c)* to implement the provisions of this part.

*(2) (a) The rules for endorsement of centennial projects must include procedures and criteria for endorsement of projects that involve production*

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*of products, events, or services. The office may provide for exclusive and nonexclusive endorsements.*

*(b) The purposes of the endorsement program, which must be reflected in the rules, are to:*

*(i) provide funding for the office's activities;*

*(ii) promote citizen and community involvement in centennial activities;*

*(iii) promote diversity in presentation of centennial products, events, services, and topics; and*

*(iv) focus national and international attention on Montana.* **(Terminates June 30, 1991—sec. 8, Ch. 664, L. 1985.)"**

Section 5. Section 2-89-302, MCA, is amended to read:

**"2-89-302. (Temporary) Commemorative centennial license plates.** (1) Notwithstanding the 4-year period provided for in 61-3-332(2), the department of justice may issue commemorative centennial license plates for a different period if requested by the Montana statehood centennial office, at prices to be agreed upon by the department and the office as provided in 2-89-303.

(2) Commemorative license plates may be:

(a) collectors' license plates, intended to be collectors' items only, distinctively marked or colored. Such plates may be designated as not valid for the purpose of licensing motor vehicles within the state; or

(b) special or limited duration license plates valid for licensing motor vehicles in the state and carrying the same general centennial design as regularly issued license plates provided for in 2-89-301, except that they may differ from such regular license plates by:

(i) color;

(ii) use of a distinctive series of registration numbers or special prefixes or suffixes for the registration numbers; and

(iii) by other details not distracting from legibility or recognition of the license plate.

(3) (a) *For all licenses sold before December 1, 1989,* proceeds from the sale of commemorative license plates, after payment of the agreed price to the department, must be used for centennial activities of the office as provided in part 1 of this chapter. *The proceeds for sales occurring after November 30, 1989, must be deposited in the general fund.*

(b) A county shall assess an additional fee of $[illegible] for each set of commemorative centennial license plates issued in the county to defray the costs incurred by the county treasurer. The county treasurer shall collect the fee and deposit the money in the county general fund.

(c) The issuance of commemorative license plates must be made at no direct cost to the state.

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(4) Commemorative license plates that are valid for licensing a motor vehicle must carry the assigned county number, as established in 61-3-332(8), either within the registration numbers or by means of an affixed nonremovable sticker bearing the appropriate county designation and used in accordance with instructions by the department. **(Terminates July 1, 1991—sec. 5, Ch. 674, L. 1985.)**"

Section 6. Section 2-89-303, MCA, is amended to read:

"**2-89-303. (Temporary) Administration.** (1) The department of justice may by rule establish application procedures for the issuance of license plates authorized by this part. The rules may provide:

(a) for the issuance of regular license plates with a centennial design to persons wishing to purchase such plates to replace present plates;

(b) for the application for and issuance of commemorative centennial license plates valid for licensing motor vehicles, as authorized by 2-89-302;

(c) whether commemorative centennial license plates, if issued under 2-89-302, may be issued as personalized plates under the provisions of Title 61, chapter 3, part 4; and

(d) other procedures necessary for the proper administration of this part.

(2) (a) The Montana statehood centennial office may request classes and variations of commemorative license plates, and each type or variation may be issued for a different price.

(b) For the issuance of commemorative license plates, the office shall contract with and provide for payment to the department for the production of such license plates. The contract must establish prices to be paid by the ultimate purchaser for the issuance of commemorative centennial license plates. *The department of justice may not, however, sell any commemorative license plates for less than $19.89, not including the county administrative fee authorized in 2-89-302(3).* **(Terminates July 1, 1991—sec. 5, Ch. 674, L. 1985.)**"

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 2, chapter 89, part 1, and the provisions of Title 2, chapter 89, part 1, apply to [sections 1 and 2].

Section 9. **Effective date.** [This act] is effective on passage and approval.

Section 10. **Termination.** [Sections 1 and 2] terminate June 30, 1991.

Approved March 29, 1989.

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# CHAPTER NO. 384

[SB 321]

AN ACT TO GENERALLY REVISE THE MONTANA HAZARDOUS WASTE ACT; TO APPLY CERTAIN PROVISIONS SPECIFICALLY TO UNDERGROUND STORAGE TANKS AND REGULATED SUBSTANCES; TO AUTHORIZE NOTIFICATION AND PERMIT FEES; TO CREATE AN UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 75-10-401 THROUGH 75-10-403, 75-10-405, 75-10-410, 75-10-411, 75-10-415, 75-10-416, AND 75-10-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature that the department of health and environmental sciences adopt rules setting forth corrective action requirements for releases from underground storage tanks and standards for tank closures.

It is the intent of the legislature that the department have the authority to develop and implement a schedule of fees to be collected for underground storage tank notifications and permits. The fees should be set at a level to defray state and local costs of implementing an underground storage tank program.

It is the intent of the legislature that the department be able to delegate authority and funds to local agents for inspections and for other duties related to the underground storage tank program.

It is the intent of the legislature that the underground storage tank program be implemented in a manner consistent with rules adopted by the state fire marshal as they relate to underground storage tanks; that the program not duplicate inspections and existing regulatory efforts conducted under the uniform fire code; and that the department and local health and fire officials work together cooperatively in implementing a program for the prevention of leakage from underground storage tanks.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-10-401, MCA, is amended to read:

**"75-10-401. Short title.** This part shall be known and may be cited as the "Montana Hazardous Waste *and Underground Storage Tank* Act"."

Section 2. Section 75-10-402, MCA, is amended to read:

**"75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of such facilities are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the

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environment from the effects of the improper, inadequate, or unsound management of hazardous wastes; to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 - 6987), as amended.

*(3) The legislature also finds that petroleum products and hazardous substances stored in underground tanks are a separate category of substances that are regulated under the federal Resource Conservation and Recovery Act of 1976, as amended, and must be addressed and controlled properly by the state under the Montana Hazardous Waste and Underground Storage Tank Act. It is the purpose of this part to authorize the department to establish, administer, and enforce an underground storage tank leak prevention program for these regulated substances. The department may use the authority provided in 75-10-413 through 75-10-417 and other appropriate authority provided by law to remedy violations of underground storage tank requirements established under this part."*

Section 3. Section 75-10-403, MCA, is amended to read:

**"75-10-403. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any *regulated substance or* hazardous waste into or onto the land or water so that the *regulated substance,* hazardous waste, or any constituent of *the regulated substance or hazardous waste* may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Hazardous waste transfer facility" means any land, structure, or improvement, including loading docks, parking areas, holding sites, and other similar areas, used for the transfer and temporary storage of hazardous wastes and where shipments of hazardous waste are temporarily held for a period of 10 days or less during the normal course of transportation up to but not including the point of ultimate treatment, storage, or disposal.

(10) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(11) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Regulated substance":

(a) means:

(i) a hazardous substance as defined in 75-10-602; or

(ii) petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

(b) does not include a substance regulated as a hazardous waste under this part.

(13) "Storage" means the actual or intended containment of *regulated substances, hazardous* wastes, *or both,* either on a temporary basis or for a period of years.

(14) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(16) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

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(17) "Underground storage tank":

(a) means, except as provided in subsections (17)(b)(i) through (17)(b)(viii):

(i) any one or combination of tanks used to contain a regulated substance, the volume of which is 10% or more beneath the surface of the ground; and

(ii) any underground pipes used to contain or transport a regulated substance and connected to a storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely underground;

(b) does not include:

(i) a septic tank;

(ii) a pipeline facility (including gathering lines) regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); or

(C) state law comparable to the provisions of law referred to in subsection (17)(b)(ii)(A) or (17)(b)(ii)(B), if the facility is intrastate;

(iii) a surface impoundment, pit, pond, or lagoon;

(iv) a storm water or wastewater collection system;

(v) a flow-through process tank;

(vi) a liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(vii) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor; or

(viii) any pipe connected to a tank described in subsections (17)(b)(i) through (17)(b)*(vi)*."

Section 4. Section 75-10-405, MCA, is amended to read:

**"75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes; and

(l) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require generators and facilities to report on an annual rather than on a biennial basis;

(c) may adopt requirements for the prevention *and correction* of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and *corrective action*;

(iv) standards for design, construction, installation, *and closure*;

*(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank for tank notification and permits to defray state and local costs of implementing an underground storage tank program; and*

*(vi) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the state fire marshal that relate to underground storage tanks.*

(d) may adopt regulatory requirements for hazardous waste transfer facilities; and

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441."

Section 5. Section 75-10-410, MCA, is amended to read:

**"75-10-410. Inspections — sampling.** (1) *(a)* An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which:

*(i) regulated substances are or have been stored in underground storage tanks if the department has reason to suspect that the tanks are not in compliance with the provisions of this part or rules adopted under this part;*

*(ii)* hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation; or

*(iii)* records pertinent to *the regulated substances or* hazardous waste activities are maintained.

*(b)* The employee or agent of the department may have access to and may copy any records relating to *the regulated substances or* hazardous wastes for the purposes of developing rules under this part or enforcing the provisions of this part, rules adopted under this part, or a permit or an order issued under this part.

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any *substances or* wastes, including samples from any *soil or groundwater or from any* vehicle in which wastes are transported, or samples of any containers or labeling for *the substances or* wastes. If the employee or agent of the department takes a sample of any hazardous waste or suspected hazardous waste, he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge."

Section 6. Section 75-10-411, MCA, is amended to read:

**"75-10-411. Regulated substance and hazardous waste site inventory.** (1) The department is authorized to conduct an inventory of sites and locations in the state where *regulated substances or* hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a *regulated substance or* hazardous waste or the release of the *regulated substance or* waste

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or any waste constituent may present a substantial hazard to public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) An order issued under subsection (2) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(4) If the department determines that no owner or operator is able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct such activities.

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in 75-10-410."

Section 7. Section 75-10-415, MCA, is amended to read:

**"75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any *regulated substance or* hazardous waste may present an imminent and substantial danger to public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or take such other action as may be necessary."

Section 8. Section 75-10-416, MCA, is amended to read:

**"75-10-416. Cleanup orders.** The department may issue a cleanup order to any person who has discharged, deposited, or spilled any *regulated substance or* hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved *disposal of a regulated substance or* hazardous waste. The order shall direct the person to clean up and remove the *regulated substance or hazardous* waste, treat *the regulated substance or hazardous waste* so as to render it nonhazardous, or to take such other actions as may be considered reasonable by the department."

Section 9. Section 75-10-420, MCA, is amended to read:

**"75-10-420. Venue for legal actions.** All legal *actions* affecting hazardous waste management facilities in the state *must* be brought in the county in which the facility is located. *All legal actions affecting underground storage tanks or the disposal of regulated substances must be brought in the county where the underground storage tank is located or, if mutually agreed upon by the affected parties, in the first judicial district, Lewis and Clark County.*"

Section 10. **Underground storage tank special revenue account.** (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) revenues from underground storage tank permit and notification fees; and

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(b) corrective action costs, damages, and penalties recovered under section 9003 of the federal Resource Conservation and Recovery Act of 1976, as amended.

(2) Appropriations may be made from the underground storage tank account for the following purposes only:

(a) state and local government costs of implementing the underground storage tank leak prevention program; or

(b) state and local government costs relating to the investigation of leaking underground storage tanks.

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Codification instruction.** [Section 10] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 10].

Section 13. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 14. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Effective date.** [This act] is effective on passage and approval.

Approved March 30, 1989.

## CHAPTER NO. 385

[SB 325]

AN ACT TO ALLOW MEMBERS OF THE MONTANA ARTS COUNCIL TO RECEIVE COMPENSATION FOR SERVICES AND TRAVEL EXPENSES; AND AMENDING SECTIONS 22-2-102 AND 22-2-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 22-2-102, MCA, is amended to read:

**"22-2-102. Membership of council — appointment.** The Montana arts council *consists* of 15 members appointed by the governor, by and with the consent of the senate. Insofar as possible, the governor shall appoint members from the various geographical areas of the state who have a keen

interest in one or more of the arts and a willingness to devote time and effort in the public interest."

Section 2. Section 22-2-103, MCA, is amended to read:

**"22-2-103. Council membership — tenure — compensation.** The term of office of each member *is* 5 years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve *in those capacities* at the pleasure of the governor. The chairman *is* the chief executive officer of the council. Each vacancy *must* be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council *must be compensated and receive* travel expenses as provided for in *2-15-124*."

Approved March 30, 1989.

# CHAPTER NO. 386

[SB 371]

AN ACT TO GENERALLY REVISE THE MONTANA HAZARDOUS WASTE ACT; PROVIDING FOR OFF-SITE CORRECTIVE ACTION; AUGMENTING INVESTIGATIVE AND ENFORCEMENT AUTHORITY; INCREASING CRIMINAL PENALTIES; CONFORMING THE ACT TO CERTAIN OF THE 1984 AMENDMENTS TO THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT; AMENDING SECTIONS 75-10-402, 75-10-404, 75-10-406, 75-10-411, 75-10-413, 75-10-415, 75-10-417, AND 75-10-418, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-10-402, MCA, is amended to read:

**"75-10-402. Findings and purpose.** (1) The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of facilities *are matters for statewide regulation and* are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of this part and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of hazardous wastes; to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 - 6987), as amended."

Section 2. Section 75-10-404, MCA, is amended to read:

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**"75-10-404. Powers of department.** (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private; *and*

*(e) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or disposal of any hazardous waste or regulated substance.*

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under this part with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. *The* integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this part and the other laws referred to in this section."

Section 3. Section 75-10-406, MCA, is amended to read:

**"75-10-406. Permits.** (1) *A* person may *not* construct or operate a hazardous waste management facility without first obtaining a permit from the department for *the* facility, except that the department may, by rule, prescribe the conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and *is* subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to *the* facility and in compliance with the provisions of this part and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the

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permit, the department rules, an order of the board or the department, or the provisions of this part. Any person who is denied a permit by the department or who has a permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of this part, the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. *Emergency* permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

(7) In permits issued under this section, the department shall require corrective action for all releases of hazardous waste or constituents at a treatment, storage, or disposal facility, *including corrective action for releases that extend beyond the facility boundaries if necessary to protect public health or the environment.* A permit must contain a schedule of compliance for corrective action and requirements for assurance of financial responsibility for completion of the corrective action.

(8) Each permit issued by the department to a person owning or operating a facility must contain the terms and conditions the department considers necessary to protect human health and the environment."

Section 4. Section 75-10-411, MCA, is amended to read:

**"75-10-411. Hazardous waste site inventory.** (1) The department is authorized to conduct an inventory of sites and locations in the state where hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a hazardous waste or the release of the waste or any waste constituent at any site may present a substantial hazard to public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

*(3) In the case of any facility or site not in operation at the time a determination is made under subsection (2) with respect to the facility or site, if the department finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, it may issue an order requiring the most recent previous owner or operator of the facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (2).*

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*(4)* An order issued under subsection (2) *or (3)* must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

*(5)* If the department determines that *the* owner or operator *referred to in subsection (2) or (3)* is *not* able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct such activities.

*(6)* For the purposes of carrying out this section, the department may exercise the powers set forth in 75-10-410."

Section 5. Section 75-10-413, MCA, is amended to read:

**"75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation by certified mail on the alleged violator or his agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order previously issued. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board *or department, by subpoena or subpoena duces tecum,* for a hearing at a time and place specified in the notice *to* answer the charges complained of *or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment*; or

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418.

*(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.*

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*(5)* This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 6. Section 75-10-415, MCA, is amended to read:

**"75-10-415. Imminent hazard.** Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any hazardous waste may present an imminent and substantial danger to public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person *(including any past or present generator, past or present transporter, and past or present owner or operator of a treatment, storage, or disposal facility) who has contributed to or who is* contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities *or order the person to take other action as may be necessary, or both. The department may also* take *appropriate* action as may be necessary *under this section, including issuing orders necessary or appropriate to protect public health and the environment.*"

Section 7. Section 75-10-417, MCA, is amended to read:

**"75-10-417. Civil penalties.** (1) Any person who violates any provision of this part, a rule adopted under this part, an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000 *per violation.* Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or permits by injunction or other appropriate remedy; or

(b) action under 75-10-418.

(4) Money collected under this section shall be deposited in the state general fund."

Section 8. Section 75-10-418, MCA, is amended to read:

**"75-10-418. Criminal penalties.** (1) *A* person *is guilty of an offense under this section if he* knowingly*:*

*(a)* transports any hazardous waste to an unpermitted facility;

*(b)* treats, stores, or disposes of hazardous waste *subject to regulation under this part or the rules adopted under this part* without a permit *or contrary to a material permit condition*;

*(c) omits material information* or makes any false statement or representation in any application, label, manifest, record, report, permit, or other

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document filed, maintained, *or used for compliance with provisions of this part or rules adopted under this part pertaining to the handling of hazardous waste;*

*(d) generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste regulated under this part or rules adopted under this part and knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed in compliance with the provisions of this part, an order issued under this part, or rules adopted under this part; or*

*(e) transports or causes to be transported without a manifest any hazardous waste required to be accompanied by a manifest.*

*(2) A person who is guilty of an offense under subsection (1) is subject to a fine of no more than $25,000 per violation or imprisonment for a period not to exceed 3 years, or both.* Each day of violation constitutes a separate violation.

*(3) A person who knowingly violates any requirement of this part or any rule or material permit condition issued pursuant to this part (except those violations specified in subsection (1)) regarding any hazardous waste that is subject to regulation is guilty of an offense and subject to a fine of up to $5,000 per violation or subject to imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.*

*(4) Upon a second conviction for a violation of this section, the maximum penalties specified in this section must be doubled.*

*(5)* Action under this section does not bar enforcement of this part, rules made under this part, orders of the department or the board, or permits by injunction or other appropriate remedy.

*(6)* Money collected under this section, except money collected in a justice's court, *must* be deposited in the state general fund."

Section 9. **Unlawful disposal.** It is unlawful to dispose of hazardous waste, as defined in this part or by rule, without a permit or, if no permit is required under this part or rules adopted under this part, by any other means not authorized by law.

Section 10. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 11. **Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 9].

Section 12. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in

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effect in all valid applications that are severable from the invalid applications.

Section 14. **Effective date.** [This act] is effective on passage and approval.

Approved March 30, 1989.

# CHAPTER NO. 387

[SB 407]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO EMERGENCY MEDICAL SERVICES; AMENDING SECTIONS 50-6-301, 50-6-302, 50-6-304, 50-6-306 THROUGH 50-6-308, AND 50-6-313 THROUGH 50-6-316, MCA; REPEALING SECTIONS 50-6-303, 50-6-305, 50-6-309, AND 50-6-312, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] grants authority to the department of health and environmental sciences to adopt rules necessary to carry out the provisions of Title 50, chapter 6, part 3.

In adopting rules, the department should consider the following:

(1) It is the intent of the legislature that the department adopt rules to regulate emergency medical services. These rules may include minimum licensing standards for various types and levels of prehospital and interhospital emergency medical services. The rules may also include other requirements to assure the quality, safety, and proper operation of emergency medical services in Montana.

(2) In addition to rules governing operation of ground ambulance services, which are currently regulated, it is intended that the department adopt rules to regulate other types of emergency medical transportation and treatment services not currently subject to regulation by the department. Examples of such services include air ambulance services, such as fixed-wing aircraft which provide life support services, including medical personnel and medical equipment; initial response rotary-wing aircraft; and nontransporting medical units. The department shall exclude from regulation air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) It is further intended that the department adopt rules to regulate various levels of emergency services that have evolved in recent years (such as basic life support, defibrillation, and advanced life support) without minimum standards, rules, or licensing to assure the health and safety of the public. Rules to regulate these various levels of service should recognize the differences in personnel, equipment, and operational requirements for each type and level of service.

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(4) The department should assure minimum statewide standards for prehospital emergency medical care; however, the rules should not be so stringent that the provision of emergency medical care in smaller communities will be made unreasonably difficult or expensive. If a licensed emergency medical service is not reasonably available, department rules should not preclude the occasional and infrequent transportation of patients by other means available. Nevertheless, rules should not conflict with any regulations issued by a federal agency, such as the federal aviation administration.

(5) The legislature intends that the department establish an advisory committee to make recommendations to the department or to the board of health and environmental sciences concerning matters described in [section 12]. Creation of this committee and its composition should be established by rule. Any such rule adopted by the department should assure that persons actively providing emergency medical care be included as members of the committee.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-6-301, MCA, is amended to read:

**"50-6-301. Findings.** The *legislature finds and declares that:*

*(1) the* public welfare requires the establishment of minimum uniform standards for the operation of *emergency medical* services*;*

*(2)* the control, inspection, and regulation of persons *providing emergency medical services is necessary* to prevent or eliminate improper care that may endanger the health of the public*; and*

*(3) the* regulation of *emergency medical care services* is in the interest of *the* social well-being and the health and safety of the state and all its people."

Section 2. Section 50-6-302, MCA, is amended to read:

**"50-6-302. Definitions.** *As used in this part, unless* the context requires otherwise, the following definitions apply:

*(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.*

*(2)* "Ambulance" means a privately or publicly owned motor vehicle *or aircraft* that is maintained and used for the transportation of patients. *The term* does not include a motor vehicle *or aircraft* owned by or operated under the direct control of the United States. *The term also does not include air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.*

*(3)* "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

*(4)* "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

*(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.*

*(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.*

*(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.*

*(8)* "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

*(9)* "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

Section 3. **Powers and duties of department.** (1) The department has general authority to supervise and regulate emergency medical services in Montana.

(2) The department shall receive and investigate complaints relating to the operation of any emergency medical service, including complaints concerning:

(a) patient care provided by an emergency medical service;

(b) the condition of any vehicle or aircraft used as an ambulance; or

(c) individual performance by an emergency medical service provider.

(3) Upon completion of an investigation as provided in subsection (2), the department shall take appropriate action, including the institution of necessary legal proceedings, as authorized under this part.

(4) In order to carry out the provisions of this part, the department shall prescribe and enforce rules for emergency medical services. Rules of the department may include but are not limited to the following:

(a) the classification and identification of specific types and levels of prehospital and interhospital medical transportation or treatment services;

(b) procedures for issuing, denying, renewing, and canceling licenses;

(c) minimum licensing standards for each type and level of service, including requirements for personnel, medical control, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and

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(d) other requirements necessary and appropriate to assure the quality, safety, and proper operation and administration of emergency medical services.

(5) A rule under this section is not effective until:

(a) a public hearing has been held for review of the rule; and

(b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency medical service. Notice must be sent at least 30 days prior to the date of the public hearing.

Section 4. Section 50-6-304, MCA, is amended to read:

**"50-6-304. Cooperative agreements — gifts, grants, and donations.** *(1)* The department may enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this part.

*(2) The department may accept and administer any gift, grant, or donation of funds to carry out the purposes of this part."*

Section 5. Section 50-6-306, MCA, is amended to read:

**"50-6-306. License required.** (1) *A* person *may not conduct or operate an emergency medical* service *without first obtaining* a license *from* the department. A separate license *is* required for each *type and level of service.*

(2) Applications for a license *must* be made in writing to the department on forms specified by the department.

*(3)* Each license *must be issued for a specific term not to exceed 2 years.* Renewal may be obtained by paying the required license fee *and demonstrating compliance with department rules.*

*(4)* The license *is* not transferable."

Section 6. Section 50-6-307, MCA, is amended to read:

**"50-6-307. License fee.** (1) There *must* be paid to the department, with each application for a license or for renewal of a license, *a* license fee of $35.

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part *must* be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part."

Section 7. Section 50-6-308, MCA, is amended to read:

**"50-6-308. Cancellation of license.** The department may cancel a license if it finds that the licensee has:

*(1)* violated *any provision* of this part *or any rule of the department or order of the department or board;* and

*(2)* failed or refused to remedy or correct the violation."

Section 8. **Waiver of licensing requirements** (1) The department may waive any licensing requirements under this part upon submission and approval of a written application for waiver by a person subject to licensing under this part.

(2) The department may waive a licensing requirement if the person provides sufficient justification to allow a finding by the department that:

(a) the waiver is necessary to avoid significant financial or other hardship; and

(b) granting the waiver would not jeopardize patient care or the public health and safety.

(3) A waiver must be issued on a temporary basis, not exceeding 6 months, and may be renewed by the department upon submission and approval of an additional application for waiver of licensing requirements.

(4) A waiver granted by the department may be revoked for good cause after notice and an opportunity for a hearing before the department have been provided to the person affected by the department's action.

(5) The decision of the department to deny or revoke a waiver under this section may be appealed to the board.

Section 9. Section 50-6-313, MCA, is amended to read:

**"50-6-313. Inspections.** (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections which *it considers* necessary.

(3) The department has free access at all reasonable hours to *the place of business of any person operating an emergency medical service in order* to make *necessary* inspections. *These inspections may include the inspection of any equipment or records pertaining to the activities of the emergency medical service.*

*(4) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials and requests entry for the purpose of conducting an inspection necessitated under this section. A person may not obstruct, hamper, or interfere with an inspection that is properly conducted pursuant to this section.*

*(5) Upon request, the owner or operator of an emergency medical service must receive a report stating all facts that relate to his compliance with the provisions of this part as determined by the department, based upon its inspection.*"

Section 10. **Injunction to require compliance.** (1) The department may seek an injunction from an appropriate district court to require compliance with this part or to require compliance with a rule of the department or an order issued by the department or board. The court to which the department applies for an injunction may issue a temporary restraining

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order if there is reasonable cause to believe that the allegations of the department are true.

(2) An action for injunctive relief initiated by the department pursuant to subsection (1) may be commenced in the district court of the county in which the defendant is located, resides, or is doing business. If the defendant cannot be located in Montana, the action may be commenced in the county where the violation is alleged to occur or have occurred, and the court has jurisdiction to restrain the violation and require compliance.

Section 11. **Administrative enforcement.** (1) If the department believes that there is a violation of this part or a violation of a rule of the department, it may serve notice of the violation upon the alleged violator or his agent. Service of notice must be by certified mail and is complete on the date of mailing.

(2) Notice required under subsection (1) must:

(a) specify the provision of this part or the rule alleged to be violated;

(b) contain a statement of the facts alleged to constitute a violation; and

(c) include an order that the alleged violator take necessary corrective action within a reasonable period of time as stated in the order. The order may include corrective action, such as decertification of a specific vehicle or aircraft from use as an ambulance or restriction on the use of a specific individual or type of or level of service in providing emergency medical service.

(3) An order issued pursuant to subsection (2) becomes final unless the person named in the order requests a hearing before the board. Such request for a hearing must be made in writing to the board at least 30 days after the date of service of notice of an alleged violation. On receipt of the request, the board shall schedule a date for a hearing.

(4) If, after a hearing, the board finds that a violation has occurred, it shall either affirm or modify the order issued by the department. An order issued by the board may prescribe the date by which the violation must cease and may prescribe time limits for corrective action. If, after a hearing, the board finds no violation has occurred, it shall rescind the department's order.

Section 12. **Advisory committee.** (1) The board or department may establish an advisory committee to assist in making determinations regarding:

(a) a request for waiver of licensing requirements as provided in [section 8];

(b) the resolution of a complaint as described in [section 3]; and

(c) issuance of an order authorized under this part.

(2) The advisory committee must be established pursuant to rules adopted by the department.

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Section 13. Section 50-6-314, MCA, is amended to read:

**"50-6-314. Authority of board or department to compel and take testimony.** In any proceeding under this part, the board *or department* may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state."

Section 14. Section 50-6-315, MCA, is amended to read:

**"50-6-315. County attorney to prosecute violations.** When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or *any rule of the department or order issued by the department or board.*"

Section 15. Section 50-6-316, MCA, is amended to read:

**"50-6-316. Criminal penalties.** Any person violating any provision of this part or *any rule of the department or order issued by the department or board* shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense, not less than $75 or more than $200 for the second offense, and for third and subsequent offenses, not less than $200 or more than $500 or imprisoned in the county jail not to exceed 90 days."

Section 16. **Civil penalties.** (1) A person who violates any provision of this part or any rule of the department or order issued by the department or board is subject to a civil penalty not to exceed $1,000 for each violation. Each day of violation constitutes a separate violation.

(2) An action commenced under this section does not bar administrative enforcement of this part as provided in [section 11] or an injunction as provided in [section 10].

(3) If the department has reason to believe that a person has violated any provision of this part or any rule of the department or order issued by the department or board, it shall bring an action in the name of the state against such person to impose, assess, and recover the civil penalties as provided in subsection (1).

(4) Any civil penalty collected under this section is in lieu of the criminal penalty provided for in 50-6-316.

(5) All penalties collected under this section must be transmitted to the state treasurer for deposit in the state general fund.

Section 17. **Repealer.** Sections 50-6-303, 50-6-305, 50-6-309, and 50-6-312, MCA, are repealed.

Section 18. **Codification instruction.** [Sections 3, 8, 10 through 12, and 16] are intended to be codified as an integral part of Title 50, chapter 6, part 3, and the provisions of Title 50, chapter 6, part 3, apply to [sections 3, 8, 10 through 12, and 16].

Section 19. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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Section 20. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Effective dates.** (1) [Section 3 and this section] are effective on passage and approval.

(2) [Sections 1, 2, and 4 through 20] are effective January 1, 1990.

Approved March 30, 1989.

# CHAPTER NO. 388

[SB 421]

AN ACT AUTHORIZING THE GOVERNOR TO ENTER INTO AGREEMENTS WITH ANY CANADIAN PROVINCE, GRANTING RECIPROCAL APPLICATION OF THE WORKERS' COMPENSATION LAWS OF THIS STATE TO MONTANA EMPLOYERS AND WORKERS; ESTABLISHING CONDITIONS FOR RECIPROCAL AGREEMENTS; REQUIRING DENIAL OF RECIPROCITY IF NO AGREEMENT IS REACHED; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Reciprocal agreements with Canadian provinces.** Subject to the conditions provided in [section 2], the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

Section 2. **Conditions for reciprocal agreements.** An agreement entered into under [section 1] must contain provisions that extend to Montana employers and workers the same privileges, benefits, and exemptions from payment of taxes and premiums for workers' compensation coverage as provided under the laws of this state. The agreement must, in the judgment of the governor, be fair and equitable and in the best interests of the citizens of this state.

Section 3. **Denial of reciprocity.** Beginning [6 months after the effective date of this act], the workers' compensation laws of this state apply to any employer or worker of a Canadian province temporarily engaged in work within this state if the province has not entered into an agreement as provided for in [section 1].

Section 4. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [sections 1 through 3].

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Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 30, 1989.

# CHAPTER NO. 389

[SB 447]

AN ACT ESTABLISHING THE PRIORITY OF APPROPRIATION OF A WATER RESERVATION AS THE DATE OF FILING OF A NOTICE OF INTENTION TO APPLY FOR A WATER RESERVATION IN A BASIN WHERE A NOTICE IS NOT PENDING; ENABLING A POTENTIAL WATER RESERVATION APPLICANT IN THE BASIN TO RECEIVE THE SAME PRIORITY OF APPROPRIATION IF A CORRECT AND COMPLETE APPLICATION IS FILED WITHIN 1 YEAR AFTER THE FILING OF THE NOTICE OF INTENTION TO APPLY; ALLOWING THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO SUBORDINATE WATER RESERVATIONS TO WATER USE PERMITS WITH PRIORITY DATES PRECEDING THE DATE OF THE BOARD ORDER ESTABLISHING WATER RESERVATIONS; EXEMPTING EXISTING WATER RESERVATIONS, THE ONGOING MISSOURI RIVER BASIN PROCEEDINGS, AND ANY PENDING WATER RESERVATION APPLICATIONS FROM THE REQUIREMENTS OF THIS ACT; AMENDING SECTION 85-2-316, MCA; AND PROVIDING AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to guide the board of natural resources and conservation in the subordination of water reservations to junior water use permits. The legislature intends that the board amend the rules governing water reservations to clarify the procedure by which subordination, if necessary, will be undertaken and to ensure that any subordination occurs in a manner that results in a clear order of priority among all permits and reservations for use in the administration of water rights associated with the specific water source.

In amending the rules, the board should make clear that the matter of subordination may be considered only after a final decision has been made on all applications for water reservations from a specific water source. If the board determines that subordination should be considered, it may request that the department of natural resources and conservation prepare an analysis concerning the potential for subordination to interfere with the purpose of the reservation and the level at which substantial interference with the reservation would occur. Once the department's analysis is completed, all affected reservants, permitholders, and other interests are to be

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provided legal notice and the opportunity to appear before the board to present testimony and other evidence concerning subordination. Any board decision on the matter of subordination should be written as an order that includes findings of fact and conclusions of law.

After determining the level at which substantial interference with the purpose of a reservation would occur, the board may subordinate a reservation only to permits that in cumulative effect and in order of priority would not exceed the established level of interference. The board should consider priority dates in deciding which reservations are to be subordinated to which permits in order to avoid confusion about the priority of right to water among permits, between permits and reservations, and among reservations. For example, a reservation with a July 1, 1985, priority date should not be subordinated to a permit with a July 1, 1988, priority date without the reservation also being subordinated to a permit with a June 30, 1987, priority date. Also, a senior water reservation should not be subordinated to a permit without all junior reservations affected also being subordinated to the permit.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-316, MCA, is amended to read:

**"85-2-316. Reservation of waters.** (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for *a* length of time as the board designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

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(3) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, *must* be paid by the applicant. In addition, a reasonable proportion of the department's cost of preparing an environmental impact statement *must* be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the board may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the board shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and

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accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to terms and conditions it considers necessary for the protection of the objectives of the reservation.

(8) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for *the* use with the district, and the district, upon approval of the application, *shall* inform the department of the approved use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of such applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time the request was made. The board shall extend the time allowed to develop a plan identifying projects for utilizing a district's reservation so long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(9) *Except as provided in 85-2-331, the priority of appropriation of a water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9).*

*(a)* A reservation under this section *has a priority of appropriation dating* from the *filing with the department of a notice of intention to apply for a water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a reservation.*

*(b) Upon receiving a notice of intention to apply for a water reservation, the department shall identify all potential water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a reservation with the priority of appropriation as described in subsection (9)(a).*

*(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the board may extend the time for preparing the application.*

*(d) The board may by order subordinate a water reservation to a permit issued pursuant to this part if:*

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*(i) the permit application was accepted by the department before the date of the board order granting the reservation; and*

*(ii) the effect of subordinating the reservation to one or more permits does not interfere substantially with the purpose of the reservation.*

*(e) The board shall by order establish the relative priority of reservations approved under this section that have the same day of priority. A reservation may* not adversely affect any rights in existence at that time.

(10) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate *the* reservation or portion *of the reservation* to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water *may* not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) Nothing in this section vests the board with the authority to alter a water right that is not a reservation.

(13) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(14) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Applicability.** [This act] does not apply to existing water reservations or to water reservation applications filed with the department of natural resources and conservation before October 1, 1989.

Approved March 30, 1989.

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# CHAPTER NO. 390

[SB 454]

AN ACT TO ALLOW EMERGENCY SERVICE PERSONNEL EXPOSED TO INFECTIOUS DISEASE DURING TRANSPORT OF PATIENTS TO HEALTH CARE FACILITIES TO BE NOTIFIED OF MEASURES NECESSARY TO PREVENT OR CONTROL THE SPREAD OF THE DISEASE; TO REQUIRE CONFIDENTIALITY; TO PROVIDE A PENALTY FOR A VIOLATION OF CONFIDENTIALITY; TO PROTECT HEALTH SERVICE PERSONNEL FROM LIABILITY FOR GOOD FAITH COMPLIANCE WITH THIS ACT; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] requires the department of health and environmental sciences to adopt rules defining an unprotected exposure to an infectious disease, specifying which infectious diseases are subject to [this act], and specifying the information concerning infectious diseases that must be included in a report of unprotected exposure.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(2) "Health care facility" means a health care facility as defined in 50-5-101.

(3) "Infectious disease" means a communicable disease designated by department rule as transmittable through an unprotected exposure.

(4) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(5) "Unprotected exposure" means exposure of a person to an infectious disease in a manner defined by department rule as likely to allow transmission of the disease, including but not limited to mouth-to-mouth resuscitation and commingling of the blood or body fluids of the person and a patient.

Section 2. **Report of unprotected exposure to disease.** (1) A report may be filed, as provided in subsection (2), by a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public who:

(a) includes but is not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and

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(b) in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and believes he has sustained an unprotected exposure.

(2) A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his name and other information required by the department, including a description of the unprotected exposure.

Section 3. **Notification of precautions after unprotected exposure to infectious disease.** (1) After a patient is transported to a health care facility, a physician shall inform the health care facility if:

(a) the physician determines that the transported patient has an infectious disease;

(b) a report of unprotected exposure to that patient has been filed; and

(c) the physician believes the unprotected exposure is capable of transmitting the infectious disease.

(2) The health care facility shall orally notify within 48 hours after the time of diagnosis and notify in writing within 72 hours after diagnosis the person who filed the report in [section 2] of the disease to which he may have been exposed and the appropriate medical precautions and treatment that the exposed person needs to take.

Section 4. **Rulemaking authority.** The department shall adopt rules to:

(1) define what constitutes an unprotected exposure to an infectious disease;

(2) specify the infectious diseases subject to [this act];

(3) specify the information about an unprotected exposure that must be included in a report of unprotected exposure; and

(4) specify recommended medical precautions and treatment for each infectious disease subject to [this act].

Section 5. **Confidentiality — penalty for violation — immunity from liability.** (1) The names of the person who suffered the unprotected exposure and the person diagnosed as having an infectious disease may not be released to anyone, except as required by department rule concerning reporting of communicable disease or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, or a physician may not be held jointly or severally liable for providing the notification required by [section 3] when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact a person filing a report of unprotected exposure are unsuccessful.

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Section 6. **Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 50.

Section 7. **Effective date.** [Section 4] and [this section] are effective on passage and approval.

Approved March 30, 1989.

# CHAPTER NO. 391

[HB 171]

AN ACT REQUIRING A WRITE-IN CANDIDATE TO FILE A DECLARATION OF INTENT; PROHIBITING THE COUNTING OR RECORDING OF VOTES CAST FOR A WRITE-IN CANDIDATE WHO HAS NOT FILED A DECLARATION OF INTENT; AMENDING SECTIONS 13-13-117, 13-14-116, AND 13-15-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Declaration of intent for write-in candidates.** (1) Except as provided in subsection (4), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsection (2), the declaration must be filed no later than 5 p.m. on the 15th day before the election and contain:

(a) the candidate's name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, less than 15 days before the election, a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with his office. Each election administrator and school district clerk shall notify the election judges in their county or district of the names of write-in candidates who have filed a declaration of intent.

(4) The requirements in subsection (1) do not apply to a write-in candidate seeking election:

(a) as a precinct committeeman or committeewoman in a primary election; or

(b) to an office for which no candidate has filed a declaration or petition for nomination or a declaration of intent.

Section 2. Section 13-13-117, MCA, is amended to read:

**"13-13-117. Method of voting.** (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "x" in the square before the name of the individual or individuals for whom he intends to vote.

(3) If the ballot contains a ballot issue, he shall mark an "x" in the applicable square indicating his vote either for or against the issue.

(4) The elector may write the name of an individual for whom he wishes to vote in the blank space or affix a preprinted label in the blank space and may vote for that individual by marking an "x" before the name. When the ballot is marked in this manner, it must be counted the same as though the name were printed upon the ballot and marked by the elector, *except as provided in 13-15-202.*

(5) An elector voting a ballot that will be counted by an optical scan ballot tabulating device shall mark his ballot in the manner prescribed on his ballot. However, his ballot must not be invalidated if he marks the voting positions with an "x".

(6) After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and the official stamp may be seen and hand it to the election judges.

(7) The judge receiving the ballots shall remove the stubs in sight of the elector and deposit each ballot in the ballot box and each stub in a box for detached stubs. The judge must place the ballots in the ballot box immediately without opening or examining them.

(8) No individual except an election judge may put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box.

(9) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it."

Section 3. Section 13-14-116, MCA, is amended to read:

**"13-14-116. Counting and canvassing of nonpartisan ballots.** (1) After closing the polls, the election officers shall separately count, canvass,

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record, and certify nonpartisan ballots, showing the number of votes cast for each person, *except as provided in 13-15-202.*

(2) Nonpartisan ballots, stubs, and unused ballots *must* be disposed of in the same manner as other ballots, stubs, and unused ballots. Returns *must* be made as provided by law."

Section 4. Section 13-15-202, MCA, is amended to read:

**"13-15-202. Counting votes cast — pollbook.** (1) *(a)* When the procedures required by 13-15-201 are completed, the election judges shall count and determine the votes cast for each individual, *except as provided in subsection (1)(b).*

*(b) The judges may not count or record write-in votes for candidates who have not filed a declaration of intent as provided in [section 1], except for write-in votes cast:*

*(i) for the office of precinct committeeman or committeewoman in a primary election;*

*(ii) for an office for which no candidate has filed a declaration or petition for nomination or a declaration of intent; or*

*(iii) on a federal write-in absentee ballot as provided in 13-13-273.*

(2) In counting, the ballots shall be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(4) As the ballots are read, two judges must write on a tally sheet the name of every individual and the office voted for and keep tallies of the number of votes for each individual, *except as provided in subsection (1)(b).*

(5) The tally sheets shall be compared and their correctness ascertained, and the judges shall immediately write in the pollbook:

(a) the names of all individuals who received votes;

(b) the offices for which they received votes;

(c) total votes received by each individual as shown by the tally sheets.

(6) In making the count in precincts where voting machines are used, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges may not be included in the count."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 30, 1989.

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# CHAPTER NO. 392

[HB 344]

AN ACT GENERALLY REVISING THE LAW RELATING TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND; EXPANDING THE OBJECTS AND PURPOSES OF THE SCHOOL; ALLOWING THE BOARD OF PUBLIC EDUCATION GREATER DISCRETION IN HIRING A SUPERINTENDENT; ALLOWING THE BOARD OF PUBLIC EDUCATION GREATER DISCRETION IN SETTING THE NUMBER OF STUDENT TRIPS HOME AT SCHOOL EXPENSE DURING A SCHOOL YEAR; AND AMENDING SECTIONS 20-8-102, 20-8-103, AND 20-8-121, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-8-102, MCA, is amended to read:

**"20-8-102. Objects and purposes.** The Montana school for the deaf and blind *is* a residential and *day* school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state. *The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled.* The object and purpose of *the* school *is* to furnish and provide, by the use of specialized methods and systems, an education *for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools* and *that* will enable children *being served by the* school to become independent and self-sustaining citizens."

Section 2. Section 20-8-103, MCA, is amended to read:

**"20-8-103. Board of public education rules.** The board of public education shall adopt and prescribe rules as the board *considers* necessary and proper for the maintenance and government of the school, the admission of children in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that *the* superintendent must have a ready and working knowledge of the sign language."

Section 3. Section 20-8-121, MCA, is amended to read:

**"20-8-121. Transportation of students at school.** (1) The school for the deaf and blind shall provide the transportation expenses allowed in subsection (4) for a residential student at the school for the deaf and blind who is a resident of the state of Montana if the student is conveyed to and from the student's residence by:

(a) a scheduled air carrier as defined in 67-1-101;

(b) charter with a commercial air operator as defined in 67-1-101;

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(c) a parent or guardian of the student, under an individual transportation contract with the school for the deaf and blind; or

(d) other transportation arrangements, provided that *the* transportation is by a carrier of passengers certified by the public service commission and approved by the superintendent of the school for the deaf and blind, pursuant to rules adopted by the board of public education.

(2) The superintendent of the school for the deaf and blind shall determine which method of transportation in subsection (1) is to be provided to a student, pursuant to rules adopted by the board of public education on transportation of residential and boarding students at the school.

(3) A parent or guardian who transports a student to or from the school under an individual transportation contract is entitled to reimbursement for transportation, pursuant to rules adopted by the board of public education on reimbursement.

(4) The transportation of a residential student provided in subsection (1) is limited to *the number of round trips* to the student's residence *as specified in the school calendar approved by the board of public education.* The superintendent of the school for the deaf and blind may grant a variance from this provision, but in no event may a reimbursement for travel expenses be provided *for travel in excess of the total number of trips approved* in any school fiscal year."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved March 30, 1989.

# CHAPTER NO. 393

[HB 406]

AN ACT DEFINING "BROKER" RELATING TO SALES OF MOTOR VEHICLES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Broker.** "Broker" means a person, other than a dealer as defined in 61-1-314, engaged in the business of offering to procure or procuring motor vehicles or who holds himself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles by negotiating purchases, contracts, sales, or exchanges, and who does not store, display, or take ownership of any vehicles for the purpose of selling vehicles.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

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Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 1, part 3, and the provisions of Title 61, chapter 1, part 3, apply to [section 1].

Approved March 30, 1989.

# CHAPTER NO. 394

[HB 471]

AN ACT ALLOWING A COUNTY WATER OR SEWER DISTRICT THAT WAS FORMED FROM A PRIVATE, NONPROFIT WATER ASSOCIATION TO ACQUIRE PROPERTY FROM THE ASSOCIATION BY EMINENT DOMAIN; AMENDING SECTION 7-13-2218, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-13-2218, MCA, is amended to read:

**"7-13-2218. District powers related to water and sewer projects.** Any district incorporated as provided in this part *may*:

(1) construct, purchase, lease, or otherwise acquire and operate and maintain water rights, waterworks, sanitary sewerworks, storm sewerworks, canals, conduits, reservoirs, lands, and rights useful or necessary to store, conserve, supply, produce, convey, or drain water or sewage for purposes beneficial to the district. *Beneficial* purposes include but *are* not limited to flood prevention, flood control, irrigation, drainage, municipal and industrial water supplies, domestic water supplies, wildlife, recreation, pollution abatement, livestock water supply, and other similar purposes.

*(2) if the incorporators of the district are members of a private, nonprofit water association that was formed under the laws of this state, acquire by eminent domain from that water association any type of property referred to in this section;*

*(3)* store water for the benefit of the district; conserve water for future use; appropriate, acquire, and conserve water and water rights for the purposes of the district; commence, maintain, intervene in, and compromise, in the name of the district, and assume the costs of any action or proceeding involving or affecting the ownership or use of waters, water rights, or sewer rights within the district used or useful for any purpose of the district or a benefit to any land situated *in the district*;

*(4)* commence, maintain, intervene in, defend, and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants;

*(5)* commence, maintain, and defend actions and proceedings to prevent any interference with the waters or rights *referred to in this section* as may endanger the inhabitants or lands of the district;

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*(6)* lease from any person, firm, or public or private corporation, with the privilege of purchase or otherwise, existing water rights, waterworks, sewerworks, canals, or reservoir systems; and carry on and maintain *them*;

*(7)* sell water or the use *of water* for household or domestic or other similar purposes and, whenever there is a surplus of water, sell or otherwise dispose of the *water* to municipalities or towns or to consumers located within or *outside* the boundaries of the district."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 30, 1989.

# CHAPTER NO. 395

[HB 492]

AN ACT ADOPTING THE "UNIFORM DISPOSITION OF COMMUNITY PROPERTY RIGHTS AT DEATH ACT".

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 11] shall be known and may be cited as the "Uniform Disposition of Community Property Rights at Death Act".

Section 2. **Application.** [This act] applies to the disposition at death of the following property acquired by a married person:

(1) (a) all personal property, wherever situated that was acquired as or became, and remained, community property under the laws of another jurisdiction; and

(b) all or the proportionate part of that property acquired with the rents, issues, or income of, the proceeds from, or in exchange for, that community property; or

(c) property traceable to that community property; or

(2) all or the proportionate part of any real property situated in this state that was acquired with the rents, issues, or income of, the proceeds from, or in exchange for property acquired as or which became and remained community property under the laws of another jurisdiction, or property traceable to that community property.

Section 3. **Rebuttable presumptions.** In determining whether [this act] applies to specific property, the following rebuttable presumptions apply:

(1) property acquired during marriage by a spouse of that marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as or to have become and remained property to which [this act] applies; and

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(2) real property situated in this state and personal property wherever situated acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which [this act] applies.

Section 4. **Disposition upon death.** Upon death of a married person, one-half of the property to which [this act] applies is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the Uniform Probate Code. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the Uniform Probate Code. With respect to property to which [this act] applies, the one-half of the property which is the property of the decedent is not subject to the surviving spouse's right to elect against the will.

Section 5. **Perfection of title of surviving spouse.** If the title to any property to which [this act] applies was held by the decedent at the time of death, title of the surviving spouse may be perfected by an order of the district court or by execution of an instrument by the personal representative or the heirs or devisees of the decedent with the approval of the district court. Neither the personal representative nor the district court in which the decedent's estate is being administered has a duty to discover or attempt to discover whether property held by the decedent is property to which [this act] applies, unless a written demand is made by the surviving spouse or the spouse's successor in interest.

Section 6. **Perfection of title of personal representative, heir, or devisee.** If the title to any property to which [this act] applies is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which [this act] applies, unless a written demand is made by an heir, devisee, or creditor of the decedent.

Section 7. **Purchaser for value or lender.** (1) If a surviving spouse has apparent title to property to which [this act] applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir or devisee, as those terms are defined in 72-1-103, of the decedent.

(2) If a personal representative or an heir or devisee of the decedent has apparent title to property to which [this act] applies, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

(3) A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly.

(4) The proceeds of a sale or creation of a security interest must be treated in the same manner as the property transferred to the purchaser for value or a lender.

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Section 8. **Creditor's rights.** [This act] does not affect rights of creditors with respect to property to which [this act] applies.

Section 9. **Acts of married persons.** [This act] does not prevent married persons from severing or altering their interests in property to which [this act] applies.

Section 10. **Limitations on testamentary disposition.** [This act] does not authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

Section 11. **Uniformity of application and construction.** Any person applying and interpreting [this act] shall do so as to make uniform the law with respect to the subject of [this act] among those states that enact it.

Approved March 30, 1989.

# CHAPTER NO. 396

[HB 541]

AN ACT TO GENERALLY REVISE THE LAW RELATING TO VOCATIONAL REHABILITATION PROGRAMS FOR PERSONS WITH EMPLOYMENT HANDICAPS AND FOR PERSONS WITH BLINDNESS OR LOW VISION; AMENDING SECTIONS 53-7-101 THROUGH 53-7-103, 53-7-105, 53-7-106, 53-7-301 THROUGH 53-7-303, AND 53-7-306, MCA; REPEALING SECTIONS 53-7-104, 53-7-304, 53-7-305, AND 53-7-307 THROUGH 53-7-309, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

This bill requires a statement of intent because [sections 2 and 13] require the department of social and rehabilitation services to adopt administrative rules for vocational rehabilitation programs for persons with employment handicaps and for persons with blindness and low vision.

It is the intent of the legislature that the department adopt rules necessary for administration of vocational rehabilitation programs provided for under this bill. Rules adopted by the department may relate to: the provision of vocational rehabilitation services, development of individual rehabilitation service plans, eligibility for services, application requirements, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, fair hearings, and definitions necessary to carry out the provisions of this bill.

In developing its rules, the department shall provide such methods of administering vocational rehabilitation services as may be required by the federal government for state participation in programs funded under the federal Rehabilitation Act of 1973.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-7-101, MCA, is amended to read:

**"53-7-101. Definitions.** *Unless the context requires otherwise,* in this part the following definitions apply:

*(1) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.*

*(2)* "Maintenance" means money payments *made in accordance with [section 6].*

*(3)* "Occupational *license*" means *a license, permit,* or other written authority required by any governmental unit to engage in an occupation.

*(4) "Person with an employment handicap" means the same as "individual with handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(8)(A)), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.*

(5) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce *the* employment handicap *of a person* within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory *medical* conditions *unless necessary to maintain a person's health in order to complete a* rehabilitation plan.

(6) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

*(7) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with employment handicaps. Such barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.*

(8) "Rehabilitation plan" means a plan, *developed with the participation of the recipient,* for providing services *to assist* a *person with an employment handicap to become independent and productive or* employable.

(9) "Rehabilitation training" means training provided to a *person with an employment handicap* to *rehabilitate the person's* employment handicap; including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(10) "Vocational rehabilitation" *means the provision of vocational rehabilitation services to a person with an employment handicap* to enable *the person* insofar as possible to *become independent and productive or employable.*

*(11) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided*

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*for by rule and that the department determines to be necessary to rehabilitate the person.*"

Section 2. Section 53-7-102, MCA, is amended to read:

"**53-7-102. Powers and duties of department.** The department:

(1) shall adopt rules *necessary for the administration of this part. Rules adopted may include but are not limited to the provision of services, individual service plans, eligibility for services, application, service goals and design, quality of services, provider relationships, program* standards, *program staffing, staff training, provider accounting procedures,* confidential information, *recipient grievance procedures,* hearings, and *definitions* necessary to carry out this part;

*(2) may* take any other action it *determines* necessary or appropriate to carry out the purposes of this part;

*(3)* may cooperate with other *departments and* agencies and institutions, both public and private, in providing for vocational rehabilitation of *persons with employment handicaps,* in studying the problems involved in vocational rehabilitation, and *in* establishing, developing, and providing programs, facilities, and services;

*(4)* may conduct research and compile statistics relating to the vocational rehabilitation of *persons with employment handicaps; and*

*(5)* may accept and use gifts to carry out this part."

Section 3. Section 53-7-103, MCA, is amended to read:

"**53-7-103. Department to cooperate with federal government.** The department shall cooperate, pursuant to agreements with the federal government, in carrying out the purposes of *the* federal *Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended,* and may adopt methods of administration as *required* by the federal government for *state participation in programs funded under the federal act.*"

Section 4. Section 53-7-105, MCA, is amended to read:

"**53-7-105. Eligibility.** *A person with an employment handicap is eligible for vocational* rehabilitation services *if* the department, after full investigation, *determines that the person may become employable or achieve accepted vocational objectives through the provision of vocational rehabilitation services that are made available as provided for in [section 6].*"

Section 5. Section 53-7-106, MCA, is amended to read:

"**53-7-106. Hearings.** *A person* applying for or receiving vocational rehabilitation *services* who is aggrieved by any action or inaction of the department is entitled *to a fair hearing* in accordance with *the rules adopted by the department.*"

Section 6. **Provision of services — financial responsibility for services.** (1) The department, in accord with this part and the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, may provide to persons determined eligible under 53-7-105 any vocational

rehabilitation services listed in 53-7-101 that are determined by the department to be appropriate and necessary for the person's vocational rehabilitation.

(2) The following vocational rehabilitation services are available without cost to an eligible person:

(a) counseling and guidance;

(b) diagnostic evaluation; and

(c) placement.

(3) In addition to the services listed in subsection (2), the department may pay the cost of other vocational rehabilitation services for an eligible person to the extent that the department determines that the person is without sufficient financial resources to pay the cost of such services.

(4) The department may in its discretion provide maintenance payments to a recipient of vocational rehabilitation services if the department determines that the recipient is without sufficient financial resources to:

(a) obtain basic necessities at a level the department determines is appropriate; and

(b) pay the cost of vocational rehabilitation services to be provided to the person.

Section 7. Section 53-7-301, MCA, is amended to read:

**"53-7-301. Definitions.** As used in this part, the following definitions apply:

(1) *(a) "Blindness"* means *a visual disability in which:*

*(i) a person's* central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

*(ii) a person's visual field at* the widest diameter subtends an angle no greater than 20 degrees.

*(b) The term includes any visual disability that, in the determination of the department, renders* vision *seriously* defective or *causes* blindness.

*(2)* "Department" means the department of social and rehabilitation services provided for in *2-15-2201.*

*(3) "Low vision" means a visual impairment that, even with correction, remains so severe as to make performance of daily tasks difficult.*

(4) "Maintenance" means money payments *made in accordance with [section 11].*

(5) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

*(6) "Person with an employment handicap" means the same as "individual with handicaps" as defined in the federal Rehabilitation Act of 1973*

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*(29 U.S.C. 706(8)(A)), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.*

*(7)* "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce *an* employment handicap *caused by blindness or low vision* within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory *medical* conditions *unless necessary to maintain a person's health in order to complete a rehabilitation plan.*

*(8)* "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

*(9) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with blindness or low vision. Such barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.*

*(10) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with blindness or low vision to become independent and productive or employable.*

*(11)* "Rehabilitation training" means training provided to a *person with blindness or low vision* to *rehabilitate the person's* employment handicap, including but not limited to manual, preconditioning, prevocational, *vocational,* and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

*(12)* "Vocational rehabilitation" *means the provision of vocational rehabilitation services to a person with blindness or low vision* to enable *the person insofar as possible* to *become independent and productive or employable.*

*(13) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person."*

Section 8. Section 53-7-302, MCA, is amended to read:

**"53-7-302. Administration.** The department *may*:

(1) cooperate with other departments *and* agencies and institutions, both public and private, in providing the services authorized by this part to *persons with blindness or low vision*; in studying the problems involved *in vocational rehabilitation*; and in establishing, developing, and providing programs, facilities, and services;

*(2)* conduct research and compile statistics relating to the provision of services to or the need of services *for persons with blindness or low vision*;

*(3) accept and use gifts to carry out this part; and*

*(4)* make rules and take *any* other action *it determines* necessary or appropriate to carry out this part."

Section 9. Section 53-7-303, MCA, is amended to read:

**"53-7-303. Cooperation with federal government.** The department *shall* cooperate, pursuant to agreements with the federal government, in carrying out the purposes of *the* federal *Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, and may adopt methods of administration required by the federal government for state participation in programs funded under the federal act.*"

Section 10. Section 53-7-306, MCA, is amended to read:

**"53-7-306. Eligibility for services.** *A person with an employment handicap due to blindness or low vision is eligible for vocational* rehabilitation services *if* the department, after full investigation, determines *that the person may become employable or achieve accepted vocational objectives through the provision of vocational rehabilitation services that are made available as provided for in [section 11].*"

Section 11. **Provision of services — financial responsibility for services.** (1) The department, in accord with this part and the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, may provide to persons determined eligible under 53-7-306 any vocational rehabilitation services listed in 53-7-301 that are determined by the department to be appropriate and necessary for the person's vocational rehabilitation.

(2) The following vocational rehabilitation services are available without cost to a person eligible for visual services:

(a) counseling and guidance;

(b) diagnostic evaluation; and

(c) placement.

(3) In addition to the services listed in subsection (2), the department may pay the cost of other vocational rehabilitation services for an eligible person to the extent that the department determines that the person is without sufficient financial resources to pay the cost of such services.

(4) The department may in its discretion provide maintenance payments to a recipient of vocational rehabilitation services if the department determines that the recipient is without sufficient financial resources to:

(a) obtain basic necessities at a level the department determines is appropriate; and

(b) pay the cost of vocational rehabilitation services to be provided to the person.

Section 12. **Hearings.** A person applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the

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department is entitled to a fair hearing in accordance with rules adopted by the department.

Section 13. **Rulemaking authority.** The department shall adopt rules necessary for the administration of this part. Rules adopted may include but are not limited to the provision of services, individual service plans, eligibility for services, application, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, hearings, and definitions necessary to carry out this part.

Section 14. **Administration of vocational rehabilitation programs — applicability.** (1) Those divisions of the department that have programs for the provision of vocational rehabilitation services may share administrative personnel, operations, and policies so as to assure uniform administration necessary under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended. Within the department, the vocational rehabilitation services provided under the federal act must be administered in such a way that they are kept separate and independent from other programs, except as provided in [section 15].

(2) This section applies to all programs and services in Title 53, chapter 7, administered by the department with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended.

Section 15. **Coordination requirements — consolidation of programs authorized.** (1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53 with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated by this section. The authority contained in this subsection is limited to the programs and services described in subsection (1). This subsection supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100].

Section 16. **Repealer.** Sections 53-7-104, 53-7-304, 53-7-305, and 53-7-307 through 53-7-309, MCA, are repealed.

Section 17. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 18. **Codification instruction.** (1) [Sections 6 and 14] are intended to be codified as an integral part of Title 53, chapter 7, part 1, and the provisions of Title 53, chapter 7, part 1, apply to [sections 6 and 14].

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(2) [Sections 11 through 13] are intended to be codified as an integral part of Title 53, chapter 7, part 3, and the provisions of Title 53, chapter 7, part 3, apply to [sections 11 through 13].

Section 19. **Effective dates.** (1) [Sections 2, 13, 17, and this section] are effective on passage and approval.

(2) [Sections 1, 3 through 12, 14 through 16, and 18] are effective July 1, 1989.

Approved March 30, 1989.

## CHAPTER NO. 397

[HB 620]

AN ACT PROHIBITING DISSEMINATION OF INCORRECT OR MISLEADING INFORMATION ABOUT ELECTION PROCEDURES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Incorrect election procedures information.** (1) A person may not knowingly or purposely disseminate to any elector information about election procedures that is incorrect or misleading or gives the impression that the information has been officially disseminated by an election administrator.

(2) A person who violates this section is guilty of a misdemeanor.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 1].

Approved March 30, 1989.

## CHAPTER NO. 398

[HB 744]

AN ACT DELETING FROM THE STATE SPECIAL REVENUE FUND THE MOTOR VEHICLE RECORDING ACCOUNT; PROVIDING THAT MONEY FORMERLY DEPOSITED IN THE ACCOUNT BE DEPOSITED IN THE GENERAL FUND; AMENDING SECTIONS 23-2-508, 23-2-510, 23-2-611, 23-2-612, 23-2-616, 23-2-619, 61-3-103, 61-3-108, 61-3-204, 61-3-321, 61-3-406, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-508, MCA, is amended to read:

**"23-2-508. Certificate of ownership.** (1) Except as provided in subsection (9), no motorboat or sailboat 12 feet in length or longer may be

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operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town or county;

(c) business or home address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) such other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, bill of sale, foreign title, official certificate of boat number, fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide such proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) Any motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the

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applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $6 must be paid to the county treasurer, $4 of which must be forwarded by the county treasurer to the department of justice and deposited in the *general* fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless he transfers a part of his interest in the motorboat or sailboat or he renews the certificate of number for the motorboat or sailboat."

Section 2. Section 23-2-510, MCA, is amended to read:

**"23-2-510. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and such signature must be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall make application for transfer of the certificate of ownership so endorsed with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the certificate upon receipt. No certificate of ownership may be issued by the department until any outstanding certificate is surrendered to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of $6 for each application for transfer of ownership, of which $4 must be forwarded to the department of justice for deposit in the *general* fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 20 calendar days from the date of purchase to register the motorboat or sailboat, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the vessel for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the 20-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or

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sailboat constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a duly licensed dealer intending to resell the motorboat or sailboat and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien."

Section 3. Section 23-2-611, MCA, is amended to read:

**"23-2-611. Certificate of ownership.** (1) No snowmobile may be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways, unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner by town and county;

(c) business or home mail address of the owner;

(d) name and address of any lien holder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number; and

(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and

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unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership, which shall contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $3 shall be paid to the county treasurer, $2 of which shall be forwarded by the county treasurer to the department of justice and deposited in the *general* fund."

Section 4. Section 23-2-612, MCA, is amended to read:

**"23-2-612. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of 23-2-601 through 23-2-644, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days thereafter, the transferee shall make application for transfer of the certificate of ownership so endorsed with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the department of justice, which shall file the same upon receipt thereof. No certificate of ownership may be issued by the department of justice until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. The county treasurer shall collect a fee of $3 for each application for transfer of ownership, of which $2 shall be forwarded to the department of justice for deposit in the *general* fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of 23-2-601 through 23-2-644 or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, certificate of registration, and a decal during the 20-day period. During this period the sticker, provided for in subsection (4), shall remain affixed to the snowmobile.

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(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the department of justice). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every such dealer, upon transferring such interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of 23-2-601 through 23-2-644. The department of justice, upon receipt of the certificate of ownership and application for a new certificate, containing notice of a security interest, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien."

Section 5. Section 23-2-616, MCA, is amended to read:

**"23-2-616. Registration and decals — application and issuance — use of certain fees.** (1) No snowmobile may be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration shall be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application shall contain the following information:

(a) name and address of the owner;

(b) certificate of ownership number;

(c) make of the snowmobile;

(d) model name of the snowmobile;

(e) year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) such other information as the department of justice may require.

(3) The application shall be accompanied by a decal fee of $2, a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue a registration receipt which shall contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

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(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of the decal fees and all interest accruing from use of this money shall be forwarded to the state treasurer and placed in the state special revenue fund to the credit of the department, with $1 designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and $1 designated for use in the development, maintenance, and operation of snowmobile facilities. All money collected from payment of the registration fee shall be forwarded to the state treasurer and deposited in the *general* fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the county motor vehicle suspense fund provided for in 61-3-509."

Section 6. Section 23-2-619, MCA, is amended to read:

**"23-2-619. Dealer registration certificate — use of fees.** (1) A dealer registration certificate shall be issued in accordance with 23-2-601 through 23-2-644.

(2) The dealer application shall be accompanied by an application fee of $5 and a registration fee of $5. Upon receipt of the dealer application and payment of fees, the dealer shall be issued two dealer snowmobile identification cards which shall be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) No bond is required of the dealer.

(4) The dealer shall have a principal place of business where he shall maintain all his business records and display and sell merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that he has sold 3 or more snowmobiles during the preceding year or pay an additional $50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of $2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) (a) The dealer application fees and all interest accruing from use of this money shall be deposited in the state special revenue fund to the credit

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of the department, with one-half designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees shall be deposited in the *general* fund."

Section 7. Section 61-3-103, MCA, is amended to read:

**"61-3-103. Filing of security interests, rights, procedure, fees.** (1) No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, on a form approved by the department, that shows a security interest has been created, has been filed with the department as provided in this section. The department shall not file any security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess such motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under the provisions of 61-4-101, must be perfected in accordance with Title 30, chapter 9, and no endorsement on the certificate of title is necessary for perfection.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected by filing under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." No other information regarding such additional security interests need be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter shall be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) The filing of a security interest or other lien, as herein provided, perfects a security interest which has attached at the time the certificate of ownership noting such interest is issued. Issuance of a certificate of ownership constitutes constructive notice to subsequent purchasers or encumbrancers, from the time of filing, of the existence of the security interest.

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(6) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 shall be applicable except that deposits must be made with the department.

(7) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment shall be required to pay the department the sum of $1 for each day thereafter that he fails to file such satisfaction.

(8) Upon receipt of any liens, or notice of liens dependent on possession, or attachments, etc., against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and/or attaching creditor.

(9) It shall not be necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(10) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department, or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state *general* fund in accordance with 15-1-504."

Section 8. Section 61-3-108, MCA, is amended to read:

**"61-3-108. Disposition of fees.** All fees payable to the department under this title, unless otherwise provided, shall be deposited in the *general* fund."

Section 9. Section 61-3-204, MCA, is amended to read:

**"61-3-204. Lost certificates.** In the event any certificate of ownership is lost, mutilated, or becomes illegible, the owner shall immediately make application for and obtain a duplicate thereof, upon furnishing satisfactory evidence of such facts and upon payment of a fee of $3. Revenue from this fee must be deposited in the *general* fund."

Section 10. Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.**

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(1) Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses shall be classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, shall pay a fee of $15 annually, regardless of size or capacity.

(2) All rates shall be 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year shall be one-half of the regular fee.

(5) An additional fee of $3 per year for each registration of a vehicle shall be collected as a registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the *general* fund.

(6) The provisions of this part with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332(7), or 61-3-335."

Section 11. Section 61-3-406, MCA, is amended to read:

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**"61-3-406. Fees for personalized plates — disposition.** In addition to all other fees and taxes imposed by law, the applicant for a personalized license plate shall pay a fee of $20 for the original personalized license plate and a fee of $5 for each transfer or renewal thereof. All revenue derived from the fee as provided herein shall be deposited in the *general* fund."

Section 12. Section 61-5-121, MCA, is amended to read:

**"61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 33 ⅓% of each driver's license fee and of each duplicate driver's license fee must be deposited into the Montana highway patrolmen's retirement pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3 ⅓% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 23 ⅓% of each driver's license fee and of each duplicate driver's license fee and the amount of 35% of each motorcycle endorsement fee must be deposited into the state traffic education account.

(e) The amount of 40% of each driver's license fee and of each duplicate driver's license fee and the amount of 60% of each motorcycle endorsement fee must be deposited into the state general fund.

(f) The entire amount of each commercial vehicle operator's endorsement fee must be deposited into the *state general fund.*

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement

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pension trust fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(d), (1)(e), and (1)(f).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the Montana highway patrolmen's retirement pension trust fund, the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), (1)(d), (1)(e), and (1)(f)."

Section 13. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 14. **Code commissioner instruction.** The code commissioner shall change any reference to the "motor vehicle recording account" in material enacted by the 51st legislature to the "general fund".

Section 15. **Effective date.** [This act] is effective July 1, 1989.

Approved March 30, 1989.

# CHAPTER NO. 399

[HB 113]

AN ACT TO CLARIFY THE PLACEMENT OPTIONS AVAILABLE TO A YOUTH PLACEMENT COMMITTEE; AMENDING SECTIONS 41-5-526 AND 41-5-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-5-526, MCA, is amended to read:

**"41-5-526. Duties of the youth placement committee.** A youth placement committee shall:

(1) review all information relevant to the placement of a youth referred or committed to the department;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) recommend in writing to the department an appropriate placement for the youth, considering the age and treatment needs of the youth and

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the relative costs of care in facilities considered appropriate for placement. *A committee shall consider placement in a licensed facility, at Mountain View school, at Pine Hills school, or with a parent, other family member, or guardian*;

(5) review temporary and emergency placements as required under 41-5-528; and

(6) conduct placement reviews as requested by the department."

Section 2. Section 41-5-527, MCA, is amended to read:

**"41-5-527. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department.** (1) When a youth has been referred or committed to the department for placement, the department shall notify the appropriate youth placement committee. The committee shall submit in writing to the department its recommendation for placement of the youth. The committee shall send a copy of the recommendation to the appropriate youth court judge.

(2) If the department accepts the committee's recommendation, the youth must be placed according to the recommendation.

(3) If the department rejects the committee's recommendation, it shall promptly notify the committee in writing of the reasons for rejecting the recommendation. The department shall send a copy of the notice to the appropriate youth court judge.

(4) After receiving a notice under subsection (3), the committee shall submit in writing to the department a recommendation for an alternative placement of the youth.

(5) If the department accepts the committee's recommendation for alternative placement, the youth must be placed according to the recommendation.

(6) If the department rejects the committee's recommendation for alternative placement, the department shall promptly notify the committee in writing of the reasons for rejecting the recommendation and *shall determine an appropriate placement for the youth. The* youth must be placed as determined by the department."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1989.

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# CHAPTER NO. 400

[HB 247]

AN ACT TO ALLOW RATEMAKING FOR CERTAIN LINES OF INSURANCE THAT ARE CONSIDERED VOLATILE OR NONCOMPETITIVE; TO DEFINE VOLATILE AND NONCOMPETITIVE INSURANCE; TO AUTHORIZE THE COMMISSIONER TO ASSESS THE INSURERS INVOLVED FOR THE COST OF ACTUARIAL SERVICES; AMENDING SECTION 33-16-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it authorizes the commissioner of insurance to make and amend reasonable rules relating to ratemaking. The problem that gave rise to this bill is the obstetrics crisis. Both obstetricians and family practitioners with an obstetrics practice have seen liability insurance premiums skyrocket. This has resulted in many rural physicians ceasing to handle this type of practice. It is simply not cost effective to continue to practice obstetrics when the premium almost doubles for obstetrics coverage. Several rural western states have felt that it is not their experience driving up the cost of coverage, but rather that of high-tech, urban medical centers. In response, this bill was drafted to allow the commissioner of insurance to determine, in areas that are noncompetitive or volatile, which states' experience will be used to supplement Montana's experience. The commissioner is authorized to adopt reasonable regulations designating certain lines of insurance as covered lines because they are noncompetitive or volatile for ratemaking purposes, requiring insurers transacting business in the covered lines to file rating data with the commissioner, and allowing the commissioner to develop reasonable trend adjustments and development factors to be used in assessing the reported data.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-16-103, MCA, is amended to read:

"**33-16-103. Application.** This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter *applies* to:

(1) life insurance;

(2) disability insurance;

(3) reinsurance, except joint reinsurance as provided in 33-16-307;

(4) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

(5) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; *or*

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*(6) surplus lines insurance as defined in 33-2-301.*"

Section 2. **Short title.** [Sections 2 through 12] may be cited as the "Ratemaking Act".

Section 3. **Purpose.** [Sections 2 through 12] are intended to ensure that rates for policies insuring exposures in Montana are based as much as possible on claims resulting from exposures in Montana and that they are not excessive, inadequate, or unfairly discriminatory. It is further intended that [sections 2 through 12] provide authorization and procedures for insurers to combine experience for a particular policy in this state with experience for similar policies elsewhere in Montana or in other states to obtain statistics that are sufficiently stable for loss projection purposes.

Section 4. **Definition.** As used in [sections 2 through 12], a line of insurance is considered "noncompetitive" if only a small number of insurers are willing to transact the line in Montana and is considered "volatile" if the line has a low volume of claims in Montana.

Section 5. **Duties of commissioner pertaining to noncompetitive or volatile lines.** (1) To implement the provisions of [sections 6 and 7], the commissioner shall:

(a) designate by rule which lines of insurance are covered because they are noncompetitive or volatile, as defined in [section 4];

(b) require by rule that each insurer transacting a line of insurance designated as noncompetitive or volatile report historical exposure, loss, and expense data; and

(c) review rate filings for a line of insurance designated as noncompetitive or volatile to determine, after a hearing, whether the filing insurer's statistics in Montana are sufficiently stable for ratemaking purposes.

(2) If a filing insurer's statistics are not sufficiently stable for all or part of the ratemaking process and if the commissioner determines the combined experience from similar policies written in Montana will not produce statistics sufficiently stable for ratemaking purposes, the commissioner shall review the experience under the covered policy in other states and determine which states' experiences are appropriate and necessary to include with experience in this state to obtain statistics that are sufficiently stable for ratemaking purposes.

(3) The commissioner shall determine the states whose experiences are appropriate and necessary based on:

(a) the number of claims filed as measured by insurance frequency statistics;

(b) the average claim size as measured by insurance severity statistics;

(c) the differences in civil justice systems or insurance regulatory systems as measured by insurance pure premium statistics; and

(d) other considerations that impact costs, such as demographic composition and economic conditions.

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Section 6. **Data reporting — rules.** (1) An insurer that has transacted a line of insurance designated as noncompetitive or volatile shall report once a year to the commissioner, on forms prescribed by the commissioner, information including:

(a) reported and estimated ultimate exposure, by year of exposure to loss;

(b) reported and estimated ultimate premiums, by year of exposure to loss;

(c) losses paid, by year incurred;

(d) loss adjustment expense paid, by year incurred;

(e) reported and ultimately incurred losses and loss adjustment expenses, by year incurred; and

(f) any other information required by the commissioner.

(2) An insurer transacting a line of insurance designated as noncompetitive or volatile shall provide to the commissioner information concerning at least 5 years of experience, with information evaluated as of the end of each calendar year. In addition to the latest reported information for each year, the insurer shall document any adjustment, including but not limited to development factors and trend adjustments, made to the reported data in projecting losses.

(3) The commissioner shall adopt by rule reasonable development factors and trend adjustments to be applied to the reported data.

Section 7. **Actuarial review — fees paid by insurer.** (1) For the purpose of determining pricing, the commissioner may employ or contract with actuarial consultants as necessary for any rate review authorized under the provisions of [section 5]. The person conducting the review shall report to the commissioner the results of his review.

(2) The reasonable fees and expenses of an actuarial consultant employed by or contracting with the commissioner for purposes of a rate filing review must be assessed against and paid by the insurer whose rates are under review.

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 11. **Codification instruction.** [Sections 2 through 7] are intended to be codified as an integral part of Title 33, chapter 16, and the provisions of Title 33, chapter 16, apply to [sections 2 through 7].

Section 12. **Effective date.** [Section 8 and this section] are effective on passage and approval.

Section 13. **Termination.** [This act] terminates October 1, 1991.

Approved April 1, 1989.

## CHAPTER NO. 401

[HB 465]

AN ACT TO REVISE THE LIVESTOCK MARKETING LAWS; TO REVISE THE DEFINITION OF "LIVESTOCK DEALER"; TO REVISE THE BOND REQUIREMENTS FOR DEALERS; TO ELIMINATE THE REQUIREMENT TO FILE FINANCIAL STATEMENTS; AMENDING SECTIONS 81-8-213, 81-8-271, 81-8-273, 81-8-275, 81-8-276, AND 81-8-279, MCA; REPEALING SECTION 81-8-277, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 81-8-213, MCA, is amended to read:

**"81-8-213. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of livestock provided for in 2-15-3102.

(2) "Department" means the department of livestock provided for in Title 2, chapter 15, part 31.

*(3) "Immediate resale" means a sale of livestock within 60 days of the purchase of the livestock.*

*(4)* "Livestock" means cattle, calves, hogs, pigs, horses, mules, sheep, lambs, and goats.

*(5)* "Livestock dealer" means a person engaged in the business of *purchasing* livestock *for immediate resale or interstate shipment.*

*(6)* "Livestock market" means a place where a person for compensation assembles livestock for sale, except:

(a) a place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and at which no other livestock is sold or offered for sale;

(b) a farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold and to which no other livestock is brought for sale or to be offered for sale;

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(c) the premises of a butcher, packer, or processor who receives animals exclusively for immediate slaughter;

(d) the premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) a place where a breeder or an association of breeders of livestock of any class assembles and offers for sale and sells under his or its own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold.

*(7)* "Person" means an individual, firm, association, partnership, or corporation.

*(8)* "Test station sale" means the sale of livestock from a place where livestock is taken to measure rates of gain under uniform feeding conditions when that place is not owned by the owner of the livestock."

Section 2. Section 81-8-271, MCA, is amended to read:

**"81-8-271. License to operate as livestock dealer — application.** (1) *A* person may *not* operate as a livestock dealer without a license. A person who wishes to operate as a livestock dealer shall file with the department an application for a license to transact such business on a form prescribed by the department stating the type of license sought and the following information:

(a) the names of the persons applying for the license together with their permanent addresses and, if the applicant is a firm, association, partnership, or corporation, the names of its directors, officers, and members, if applicable;

(b) the post-office address and principal place of business of the applicant;

(c) if the applicant is a foreign corporation, its principal place of business outside the state, the name of the state in which it is incorporated, and a statement showing that it has complied with the laws of this state relating to foreign corporations and its right to do business in this state;

*(d) proof of acquisition of a bond from the packers and stockyards administration of the United States department of agriculture.*

(2) An application fee of $50 must be submitted with each application for a livestock dealer's license. The fee shall be the first annual fee if the license is granted.

(3) A person who purports to act as an agent for a livestock dealer in the purchase or sale of livestock may not engage in such business activities without a livestock dealer's license."

Section 3. Section 81-8-273, MCA, is amended to read:

**"81-8-273. Refusal to issue or renew license.** (1) The department shall refuse to issue or renew a license if the applicant:

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(a) has failed to maintain a financial condition of total assets in excess of total liabilities, including total current assets in excess of total current liabilities;

(b) is in violation of any of the provisions of this part;

(c) has knowingly made false or misleading statements as to the health or physical condition of livestock or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or the selling, exchanging, soliciting, or negotiating of the sale of livestock or the weighing of the same;

(d) has failed to keep records of all purchases and sales or refused to grant inspection of such records by authorized agents of the department;

(e) is in violation of the rules adopted by the department;

(f) has failed to comply with a lawful order of the department;

*(g)* has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with livestock transactions;

*(h)* has been suspended by the order of the secretary of agriculture of the United States department of agriculture under provisions of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 181, et seq.; or

*(i)* employs a person required to be licensed whose license cannot be renewed or whose license is under suspension or revocation by the department or the United States department of agriculture.

(2) An applicant refused a license or license renewal may not apply again for 1 year following refusal unless the department determines that the applicant has met the requirements of this part."

Section 4. Section 81-8-275, MCA, is amended to read:

**"81-8-275. Termination of license.** A license issued under this part terminates at the close of business on May 1 of each year following the issuance of the *license* unless the annual fee has been paid."

Section 5. Section 81-8-276, MCA, is amended to read:

**"81-8-276. Annual fee and financial statement.** Livestock dealers shall pay an annual fee established by the department and *when requested by the department shall* supply a current financial statement. The fee is payable on May 1 to the state treasurer to the credit of the department."

Section 6. Section 81-8-279, MCA, is amended to read:

**"81-8-279. Penalties.** (1) A person who violates any provision of 81-8-271 through 81-8-273, 81-8-276, *or* 81-8-278 or rules adopted by the department to implement those sections is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000 or imprisoned for not more than 6 months, or both.

(2) Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% shall be paid into the state

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treasury and credited to the special revenue fund for the use of the department and 50% shall be paid into the general revenue fund of the county in which the conviction occurred."

Section 7. **Repealer.** Section 81-8-277, MCA, is repealed.

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1989.

# CHAPTER NO. 402

[HB 516]

AN ACT TO CLARIFY THE MUTUAL RESPONSIBILITY OF ADJACENT LANDOWNERS TO MAINTAIN FENCING BETWEEN THEM; AND AMENDING SECTION 70-16-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-16-205, MCA, is amended to read:

**"70-16-205. Monuments and fences — mutual obligation of adjoining owners.** *(1)* Coterminous owners are mutually bound equally to maintain:

*(a)* the boundaries and monuments between them;

*(b)* the fences between them, unless one of them chooses to let his land lie without fencing, in which case if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter. However, using land for grazing or pasturage of any kind whatsoever *must* be *considered* a usage of *the* land, and *the* land *must* not be considered as lying idle under the provisions of this section.

*(2) Except as provided by prescription, custom, or agreement between coterminous owners, each coterminous owner shall maintain all fencing to the right of the midpoint of the common boundary line as viewed from his land. If the land of one owner is entirely surrounded by the land of another, each owner shall maintain all fencing to the right, as viewed from his land, of the northeastern corner of the surrounded land or, if there is more than one northeastern corner, then from the northernmost northeastern corner to a point midway around the surrounded land. If there is a substantial difference in terrain or topographical features of the land between the coterminous owners, responsibility for maintaining the fence must be determined by mutual agreement with consideration given to factors such as cost and time."*

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Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 1, 1989.

# CHAPTER NO. 403

[HB 557]

AN ACT REQUIRING A DEDUCTION FROM A POLICE OFFICER'S MONTHLY COMPENSATION FOR PAYMENT OF GROUP LIFE INSURANCE PREMIUMS AND TO DEFRAY CERTAIN EXPENSES INCURRED BY THE MONTANA POLICE PROTECTIVE ASSOCIATION; ALLOWING FOR NONPARTICIPATION OF POLICE OFFICERS OF A CITY OR TOWN UPON APPROVAL OF THREE-FOURTHS OF THEIR MEMBERSHIP.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Contributions for group life insurance and representation.** (1) Unless the police protective association of the city or town chooses not to participate, as provided in [section 2], an employer shall deduct from each police officer's monthly compensation, except a police chief, assistant chief, or captain, an amount equal to 0.5% of the base salary paid to newly confirmed police officers in the city or town. The employer shall pay this amount on a monthly basis to the treasurer of the Montana police protective association to be used to pay premiums on a group life insurance policy for contributing police officers of participating city and town associations and to defray expenses incurred by the association when representing members of the plan.

(2) An employer may not deduct the amount provided for in subsection (1) from the monthly compensation of a police chief, assistant chief, or captain unless that person notifies his employer in writing to make the deduction.

(3) A person who contributes under this section is a full member of the Montana police protective association and is entitled to all membership rights and benefits, including those benefits provided in subsection (1).

(4) For the purposes of this section, "police officer" means an officer who participates in the police officers' retirement system under Title 19, chapter 9.

Section 2. **Nonparticipation.** (1) The members of a city or town police protective association may by a vote of three-fourths of the membership cease the participation of all the members in the provision of group life insurance through salary deductions. Salary deductions for payment of group life insurance premiums and representation may not be made by the city or town of the nonparticipating association. An association may

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resume participation by a vote of three-fourths of the membership of the city or town police protective association.

(2) Notice of nonparticipation or resumption of participation must be provided to the governing body of the city or town and to the Montana police protective association.

Approved April 1, 1989.

# CHAPTER NO. 404

[HB 559]

AN ACT ALLOWING A MOTOR VEHICLE MANUFACTURER'S REPRESENTATIVE TO DISPLAY MANUFACTURER'S LICENSE PLATES; ESTABLISHING QUALIFICATIONS; AND PROVIDING FOR FEES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Manufacturer's representative's license plates.** (1) As used in [this act], "manufacturer's representative" means a resident of Montana who is an employee of a motor vehicle manufacturer licensed under the provisions of 61-4-202 and whose responsibility includes coordinating and promoting sales efforts with the manufacturer's dealers.

(2) Subject to the provisions of [this act] and notwithstanding the provisions of Title 61, chapter 3, a manufacturer's representative who qualifies as provided in subsection (1) may display manufacturer's license plates on a motor vehicle used solely for business purposes.

(3) To qualify for the issuance and use of manufacturer's license plates by its manufacturer's representatives, the manufacturer licensed under 61-4-202 shall apply on forms and in a manner prescribed by the department and pay the fees provided for in [section 2].

Section 2. **Fees.** Upon making the application required under [section 1], the manufacturer shall pay to the department a fee of $250, which entitles the manufacturer to one set of number plates, and an additional fee of $20 for each additional set of number plates. The manufacturer may receive one set of number plates for each manufacturer's representative.

Section 3. **Assignment of numbers.** (1) Upon the licensing of a manufacturer under 61-4-202, the department shall assign to the manufacturer a distinctive serial number and, after payment of fees provided for in [section 2], furnish every qualified manufacturer's representative of that manufacturer with one set of number plates. Assigned number plates must be similar to number plates furnished to owners of motor vehicles but must bear, in addition to the serial number assigned to the manufacturer, the letters "MFG".

(2) The department shall cause to be placed on each set of license plates issued to a manufacturer a serial number assigned to the manufacturer and the actual number of license plates issued to the manufacturer.

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The department shall provide nonremovable stickers bearing the appropriate county designation. The stickers must be affixed to the license plates in use in accordance with instructions by the department.

(3) A manufacturer's representative who qualifies as provided in [section 1(1)] may display manufacturer's license plates on a motor vehicle held for bona fide sale or used solely in the conduct of the manufacturer's business and operated by or under the control of the manufacturer's representative.

(4) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a sheriff or any other law enforcement officer, that a manufacturer has been improperly licensed, has used the manufacturer's license other than as authorized in this section, or is not qualified as a manufacturer under the requirements of this part, the department may revoke the manufacturer's license.

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 4, part 2, and the provisions of Title 61, chapter 4, part 2, apply to [sections 1 through 3].

Approved April 1, 1989.

# CHAPTER NO. 405

[HB 578]

AN ACT TO ESTABLISH A PROCEDURE WHEREBY A CUSTODIAL PARENT OR GUARDIAN CAN FILE AN OBJECTION WITH THE COURT TO THE VISITATION RIGHTS OR CUSTODY RIGHT OF THE OTHER PARENT IF THE OTHER PARENT HAS BEEN CONVICTED OF CERTAIN CRIMES; PROVIDING THAT THE CONVICTED PARENT HAS THE BURDEN OF PROVING THAT HIS VISITATION OR CUSTODY IS IN THE BEST INTEREST OF THE CHILD OR CHILDREN; AND AMENDING SECTIONS 40-4-217 AND 40-4-219, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4-217, MCA, is amended to read:

**"40-4-217. Visitation.** (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation

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rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court *may* not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health *or unless the provisions of subsection (6) apply.*

(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his visitation schedule.

*(6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.*

*(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.*

*(c) This subsection (6) applies to the following crimes:*

*(i) deliberate homicide, as described in 45-5-102;*

*(ii) mitigated deliberate homicide, as described in 45-5-103;*

*(iii) sexual assault, as described in 45-5-502;*

*(iv) sexual intercourse without consent, as described in 45-5-503;*

*(v) incest, as described in 45-5-507;*

*(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);*

*(vii) endangering the welfare of children, as described in 45-5-622;*

*(viii) domestic abuse of the type described in 45-5-206(1)(a);*

*(ix) sexual abuse of children, as described in 45-5-625."*

Section 2. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) *or (6)*.

(3) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(4) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(5) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

*(6) (a) If a parent has been convicted of any of the crimes listed in subsection (6)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and the convicted parent shall have 20 days from the notice to respond. If the convicted parent fails to respond within 20 days, the custody rights of the convicted parent are suspended until further order of the court. If the convicted parent responds and objects, a hearing must be held within 30 days of the response.*

*(b) The convicted parent has the burden at the hearing to prove that custody by the convicted parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.*

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*(c) This subsection (6) applies to the following crimes:*

*(i) deliberate homicide, as described in 45-5-102;*

*(ii) mitigated deliberate homicide, as described in 45-5-503;*

*(iii) sexual assault, as described in 45-5-502;*

*(iv) sexual intercourse without consent, as described in 45-5-503;*

*(v) incest, as described in 45-5-507;*

*(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);*

*(vii) endangering the welfare of children, as described in 45-5-622;*

*(viii) domestic abuse of the type described in 45-5-206(1)(a);*

*(ix) sexual abuse of children, as described in 45-5-625."*

Approved April 1, 1989.

# CHAPTER NO. 406

[HB 594]

AN ACT TO ELIMINATE THE REQUIREMENT THAT A DISTRICT COURT JUDGE RESIDE IN A COUNTY SEAT WITHIN HIS DISTRICT; AND AMENDING SECTION 3-5-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-5-202, MCA, is amended to read:

**"3-5-202. Qualifications and residence.** (1) No person is eligible for the office of judge of a district court unless he is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) A judge of a district court need not be a resident of the district for which he is elected or appointed at the time of his election or appointment, but after his election or appointment, he must reside in the district for which he is elected or appointed during his term of office."

Approved April 1, 1989.

# CHAPTER NO. 407

[HB 84]

AN ACT TO MAKE OPTIONAL THE REQUIREMENT THAT A BOND ELECTION NOTICE BE POSTED IN THE VOTING PRECINCT; AND AMENDING SECTION 7-7-4227, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-7-4227, MCA, is amended to read:

**"7-7-4227. Notice of election.** (1) Whether such election is held at the general city or town election or at a special election, separate notice shall be given thereof.

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(2) (a) The notice shall state:

(i) the date when the election will be held;

(ii) the hours between which the polls will be open;

(iii) the amount of bonds proposed to be issued;

(iv) the purpose thereof;

(v) the term of years through which the bonds will be paid; and

(vi) such other information regarding the election and the proposed bonds as the board may consider proper.

(b) If the bonds proposed to be issued are for two or more purposes, each purpose and the amount thereof must be separately stated.

(3) The notice shall be *published as provided in 1-1-108 and may be* posted in each voting precinct in the city or town at least 10 days prior to the date for holding the election."

Approved April 3, 1989.

## CHAPTER NO. 408

[HB 207]

AN ACT TO GENERALLY REVISE THE MONTANA STATE LOTTERY ACT OF 1985 TO PROVIDE THAT THE LOTTERY COMMISSION MAY DETERMINE THE PERCENTAGE OF PRIZE PAYOUT SUBJECT TO A MINIMUM OF 45 PERCENT OF THE MONEY PAID FOR TICKETS OR CHANCES; TO CLARIFY THAT SALES AGENTS' COMMISSIONS ARE BASED ON THE FACE VALUE OF THE TICKETS; PROVIDING THAT THE LOTTERY COMMISSION MAY ADOPT RULES RELATING TO LOTTERY STAFF SALES INCENTIVES OR BONUSES AND SALES AGENTS' COMMISSIONS; TO CLARIFY THAT TICKETS OR CHANCES MAY NOT BE PURCHASED ON CREDIT; TO PROHIBIT MEMBERS OF HOUSEHOLDS OF LOTTERY STAFF, CONTRACTORS, AND AUDITORS FROM PARTICIPATING IN OR HAVING A FINANCIAL INTEREST IN THE LOTTERY; TO MAKE THE FINGERPRINTING OF SALES AGENTS PERMISSIVE INSTEAD OF MANDATORY; TO CLARIFY THAT MONTANA MAY PARTICIPATE IN MULTISTATE GAMES; TO PROVIDE FOR THE STATUTORY APPROPRIATION OF LOTTERY SALES AGENT COMMISSIONS, PRIZES, AND NET REVENUE; TO ELIMINATE THE STATUTORY APPROPRIATION OF LOTTERY OPERATING EXPENSES; TO CLARIFY THAT THE LEGISLATIVE AUDITOR MAY HAVE THE ANNUAL AUDIT CONDUCTED BY A PARTY OUTSIDE HIS OFFICE; AMENDING SECTIONS 17-7-502, 23-5-1007, 23-5-1008, 23-5-1016, 23-5-1017, 23-5-1019, 23-5-1020, 23-5-1027, AND 23-5-1028, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

This bill requires a statement of intent because [sections 2 and 4] grant rulemaking authority to the lottery commission. The overall intent and purpose of this bill is to enable the lottery to be run as a business.

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The legislature finds that the lottery is a complex business driven by market forces and must be given flexibility in order to maximize profits.

The legislature also finds that the people of Montana overwhelmingly approved the creation of a lottery and that the intent of the people was also to maximize profits to the state.

The legislature finds that an operational budget based on a percentage of revenue has hampered the lottery commission in its attempt to operate as a business. The lottery must be able to plan for market expansion, improvement of the product line, cost reduction, and organizational development as would a private business. These plans cannot be made or carried out unless the operational budget is a fixed amount. It is the intent of the legislature that the lottery's operating budget be set by the legislature as are the budgets of all other state agencies.

In [section 2], the legislature grants additional rulemaking authority to the lottery commission to adopt rules providing for staff incentives or bonuses for increased sales only if these rules can be shown to significantly increase sales. It is the further intent that the rules for sales incentives and bonuses be based on incentive and bonus plans that have proven successful in private business or other lotteries.

The legislature intends to give the commission flexibility to change the prize payout in instant ticket games in order to increase profits. If increased prize payout does not result in increased net revenue, the decision of the commission then should be to roll back the prize payout percentage to comply with the legislative intent of maximizing profits.

In [section 4], the legislature allows the lottery commission to adopt rules providing for increased commissions to retailers if retailers increase their sales of lottery products. The legislature intends that the bonus commission plans be based on successful plans in other lotteries, such as Colorado's, whereby total sales are projected for each retailer based on average sales over a period of time, such as 1 year. Whenever future sales for an established period of time exceed forecasted sales, a bonus may be paid. For example, if a retailer maintains average sales, the commission is the regular 5%; if a retailer sells a certain percentage above average, 6%; an even higher percentage of increase in sales may provide 7%, etc. The purpose of bonus commissions is to increase net revenue to the state.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; *23-5-1016;* 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 2. Section 23-5-1007, MCA, is amended to read:

**"23-5-1007. Powers and duties of commission.** The commission shall:

(1) establish and operate a state lottery and may not become involved in any other gambling or gaming;

(2) determine policies for the operation of the state lottery, supervise the director and his staff, and meet with the director at least once every 3 months to make and consider recommendations, set policies, determine types and forms of lottery games to be operated by the state lottery, and transact other necessary business;

*(3) maximize the net revenue paid to the superintendent of public instruction under 23-5-1027 and ensure that all policies and rules adopted further revenue maximization;*

*(4) subject to 23-5-1027(1), determine the percentage of the money paid for tickets or chances to be paid out as prizes;*

*(5)* determine the price of each ticket or chance and the number and size of prizes;

*(6)* provide for the conduct of drawings of winners of lottery games;

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*(7)* carry out, with the director, a continuing study of the state lotteries of Montana and other states to make the state lottery more efficient, profitable, and secure from violations of the law;

*(8)* study and may enter into agreements with other lottery states to offer lottery games;

*(9)* prepare quarterly and annual reports on all aspects of the operation of the state lottery, including but not limited to types of games, gross revenue, prize money paid, operating expenses, net revenue to the state, contracts with gaming suppliers, and recommendations for changes to this part, and deliver a copy of each report to the governor, the department of administration, the legislative auditor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house; and

*(10)* adopt rules *relating to lottery staff sales incentives or bonuses and sales agents' commissions and any other rules* necessary to carry out this part."

Section 3. Section 23-5-1008, MCA, is amended to read:

**"23-5-1008. Legislative liaison committee — bipartisan — compensation from lottery fund.** (1) There is a legislative liaison committee.

(2) The liaison committee consists of four legislators. Two members must be from the senate and two members must be from the house of representatives. The speaker of the house and the senate committee on committees shall appoint the members of the liaison committee, and no more than two members may be of the same political party. No legislator who has any ownership interest in any gambling device or establishment may be appointed to the liaison committee.

(3) A member of the liaison committee is entitled to compensation and expenses as provided in 5-2-302, paid from money *appropriated to* the *lottery*, while performing his duties as a member of the liaison committee, as provided in subsection (4) of this section.

(4) The liaison committee shall meet once each fiscal year with the commission at Helena and shall report to each legislature on the activities and operations of the state lottery."

Section 4. Section 23-5-1016, MCA, is amended to read:

**"23-5-1016. Ticket or chance sales agents — licenses.** (1) Lottery tickets or chances may be sold only by ticket or chance sales agents licensed by the director in accordance with this section.

(2) The commission shall by rule determine the places at which state lottery game tickets or chances may be sold.

(3) (a) Before issuing a license, the director shall consider:

(i) the financial responsibility and security of the applicant and his business or activity;

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(ii) the accessibility of his place of business or activity to the public; and

(iii) the sufficiency of existing licenses to serve the public convenience and the volume of the expected sales.

(b) No person under 18 years of age may sell lottery tickets or chances.

(c) A license as an agent to sell lottery tickets or chances may not be issued to any person to engage in business exclusively as a lottery ticket or chance sales agent.

(4) The director may issue temporary licenses upon conditions he considers necessary.

(5) License applicants shall pay a $50 fee to cover the cost of investigating and processing the application.

(6) The director may require a bond from any licensed agent in an amount provided in the commission's rules and may purchase a blanket bond covering the activities of licensed agents.

(7) A licensed agent shall display his license or a copy thereof conspicuously in accordance with the commission's rules.

(8) A license is not assignable or transferable.

(9) No employee of a ticket or chance sales agent may be required to sell lottery game tickets or chances if the sale is against his religious or moral beliefs.

(10) Sales agents are entitled to *a commission of* no more than 5% *of the face value of* tickets and chances *that they purchase from the lottery and do not return. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales. The commissions are statutorily appropriated, as provided in 17-7-502, to the lottery.*

(11) Each sales agent shall keep a complete and up-to-date set of records and accounts fully showing his sales and provide it for inspection upon request of the commission, the director, the department of commerce, the office of the legislative auditor, or the office of the attorney general.

(12) Sales agents may pay the state lottery only by check, bankdraft, electronic fund transfer, or other recorded, noncash, financial transfer method as determined by the director.

(13) A license may be suspended or revoked for failure to maintain the license qualifications provided in subsection (3) or for violation of any provision of this part or a commission rule. Prior to suspension or revocation, the licensee must be given notice and an opportunity for a hearing."

Section 5. Section 23-5-1017, MCA, is amended to read:

**"23-5-1017. Sales restrictions.** (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

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(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances *may not be purchased on credit.*

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their *households.*

(5) The names of elected officials may not appear on any ticket or chance."

Section 6. Section 23-5-1019, MCA, is amended to read:

**"23-5-1019. Felony and gambling-related convictions — ineligibility for lottery positions.** No person who has been convicted of a felony or a gambling-related offense under federal law or the law of any state may be a commissioner, director, assistant director, employee of the state lottery, or licensed ticket or chance sales agent. Prior to appointment *as a commissioner, director, assistant director, or employee,* a person shall submit to the commission a full set of fingerprints made at a law enforcement agency by an agent or officer of such agency on forms supplied by the agency. *The assistant director for security may require a ticket or chance sales agent to submit fingerprints prior to licensing.*"

Section 7. Section 23-5-1020, MCA, is amended to read:

**"23-5-1020. Conflict of interest.** No commissioner, director, assistant director, state lottery employee, licensed ticket or chance sales agent, or member of his *household* may have a financial interest in any gaming supplier or any contract between the state lottery and a gaming supplier or accept any gift or thing of value from a gaming supplier."

Section 8. Section 23-5-1027, MCA, is amended to read:

**"23-5-1027. (Effective July 1, 1988) Disposition of revenue.** (1) *A minimum of* 45% of the money paid for tickets or chances must be paid out as prize money. *The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.*

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

*(3)* That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by 23-5-1026 to the superintendent of public instruction for distribution as equalization aid to the retirement fund obligations of elementary and high school districts in the manner provided in 20-9-532. *The net revenue is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction.*

*(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the budget office.*"

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Section 9. Section 23-5-1028, MCA, is amended to read:

"**23-5-1028. Annual audit.** The legislative auditor shall conduct *or have conducted* an annual audit of the state lottery. The costs of the audit must be paid out of the state lottery fund. A copy of the audit report must be delivered to the commission, the director, the governor, the president of the senate, the speaker of the house of representatives, and each member of the appropriate committee of each house of the legislature as determined by the president of the senate and the speaker of the house."

Section 10. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved April 3, 1989.

# CHAPTER NO. 409

[HB 289]

AN ACT ALLOWING THE DONATION OF PADDLEFISH ROE TO A NONPROFIT CORPORATION FOR USE IN CAVIAR PRODUCTION; DESIGNATING HOW PROFITS REALIZED FROM THE SALE OF CAVIAR ARE TO BE USED; INCREASING RESTITUTION ON ILLEGAL KILLING OR POSSESSION OF PADDLEFISH; AND AMENDING SECTIONS 87-1-111, 87-3-111, AND 87-4-601, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 87-4-601(3) grants rulemaking authority to the department of fish, wildlife, and parks to implement the paddlefish roe donation program. The legislature intends that the priority in implementing the provisions of this bill be on maintaining the paddlefish fishery. At a minimum, it is intended that the rules address the following:

(1) a process for the selection of a Montana nonprofit corporation to accept roe donations and to process and market the paddlefish roe;

(2) recordkeeping required of the selected corporation and commercial buyers to assure proper administration of the program;

(3) a process for development of recommendations and review of projects in expending funds raised through the paddlefish roe program;

(4) a provision that the total number of paddlefish taken in the Yellowstone River Basin may not exceed 3,500 in any year; and

(5) any other topics necessary for administration of the program.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-4-601, MCA, is amended to read:

"**87-4-601. Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in *subsections* (2) *and (3), a* person may *not*, for speculative purposes, for market, or for sale, in any way, catch any of the fish

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which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn *from any game fish.*

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners *of private ponds*;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for *propagation* purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules and regulations as the fish and game commission may prescribe; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

*(3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish at the Intake fishing access site north of Glendive during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar.*

*(b) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.*

*(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.*

*(d) (i) One-half of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, marketing, and administration must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.*

*(ii) The other half of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, marketing, and administration must be paid to the nonprofit organization that processes and markets the caviar. An advisory committee must be appointed by the*

*commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and two representatives of area sportsmen. The advisory committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants.*"

Section 2. Section 87-3-111, MCA, is amended to read:

"**87-3-111. Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section *do* not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110*; or*

*(c) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.*

(3) Except as provided in subsection (4), any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(4) Any person engaging in the activities prohibited in subsection (1) in furtherance of a scheme to traffic in the body parts of unlawfully taken species is guilty of a felony and shall be punished by a fine of $10,000 or imprisonment in the state prison for a term of 1 year, or both."

Section 3. Section 87-1-111, MCA, is amended to read:

"**87-1-111. Restitution for illegal killing or possession of certain wildlife.** In addition to other penalties provided by law, a person convicted of the illegal killing or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(1) bighorn sheep, mountain goat, caribou, buffalo, grizzly bear, moose, and endangered species, $1,000;

(2) elk, mountain lion, black bear, lynx, and wolverine, $500;

(3) deer, antelope, fisher, raptor, swan, bobcat, pallid and white sturgeon, *and paddlefish,* $300;

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(4) grayling and furbearers not listed in subsection (1), (2), or (3), $100;

(5) game bird (except swan), $25;

(6) game fish, $10."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date — termination.** [This act] is effective July 1, 1989, and terminates June 30, 1993.

Approved April 3, 1989.

# CHAPTER NO. 410

[HB 340]

AN ACT CLARIFYING A CITY'S OR TOWN'S AUTHORITY TO BAN THE SALE OF FIREWORKS WITHIN ITS LIMITS; AMENDING SECTION 50-37-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-37-102, MCA, is amended to read:

**"50-37-102. Where chapter not to apply.** (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit issued under 50-37-107 at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

*(3) Nothing in this chapter authorizes the sale of fireworks in a city or town that has banned the sale of fireworks within the city or town as authorized in 7-33-4206."*

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Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 3, 1989.

## CHAPTER NO. 411

[HB 355]

AN ACT TO AUTHORIZE INSURERS TO INVEST IN OBLIGATIONS ISSUED, ASSUMED, OR GUARANTEED BY THE AFRICAN DEVELOPMENT BANK; AMENDING SECTION 33-2-817, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-2-817, MCA, is amended to read:

"**33-2-817. International bank.** An insurer may invest in obligations issued, assumed, or guaranteed by the international bank for reconstruction and development *or by the African development bank.*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 3, 1989.

## CHAPTER NO. 412

[HB 393]

AN ACT RELATING TO POSSESSION OF AN INTOXICATING SUBSTANCE; INCREASING THE PENALTY FOR A PERSON BETWEEN 18 AND 21 YEARS OF AGE WHO POSSESSES AN ALCOHOLIC BEVERAGE; PROVIDING THAT COSTS OF PARTICIPATION IN A COMMUNITY-BASED SUBSTANCE ABUSE INFORMATION COURSE MAY BE PAID INDIRECTLY THROUGH COURT-ORDERED COMMUNITY SERVICE; AND AMENDING SECTION 45-5-624, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.** (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

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(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) *if the person:*

*(i) is less than 18 years of age,* be fined not to exceed $50; *or*

*(ii) is 18 years or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense. For a fourth or subsequent offense a person may be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both; and*

(b) be ordered to complete and pay, *either directly with money or indirectly through court-ordered community service,* all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both."

Approved April 3, 1989.

# CHAPTER NO. 413

[HB 396]

AN ACT RENAMING THE BOARD OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS; CHANGING AND REDEFINING CERTAIN TERMS RELATING TO LICENSURE OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS; REVISING PROVISIONS CONCERNING LICENSE RENEWAL; AND AMENDING SECTIONS 2-15-1849, 37-15-102, 37-15-103, 37-15-305, AND 37-15-308, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1849, MCA, is amended to read:

**"2-15-1849. Board of speech-language pathologists and audiologists.** (1) There is a board of *speech-language* pathologists and audiologists.

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(2) The board consists of five members who shall:

(a) be appointed by the governor with the consent of the senate;

(b) have been residents of this state for at least 1 year immediately preceding their appointment; and

(c) have been engaged in rendering services to the public, teaching, or performing research in the field of *speech-language* pathology or audiology for at least 5 years immediately preceding their appointment.

(3) At least two members of the board shall be *speech-language* pathologists and at least two shall be audiologists, with the remaining member to be a public member who is a consumer of *speech-language* pathology or audiology services and who is not a licentiate of the board or of any other board within the department. All board members, except the public member, shall at all times be validly licensed in *speech-language* pathology or audiology.

(4) Appointments shall be for 3-year terms with no person eligible to serve more than two full consecutive terms. Terms begin on the first day of the calendar year and end on the last day of the calendar year.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-15-102, MCA, is amended to read:

**"37-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board" means the board of *speech-language* pathologists and audiologists provided for in 2-15-1849.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "*Speech-language* pathologist" means *a person* who practices *speech-language* pathology and who *meets the qualifications set forth in this chapter. A person represents himself to be a speech-language pathologist when he* presents himself to the public by any title or description of services *or functions that he directly or indirectly performs* incorporating the words "speech pathologist", *"speech pathology"*, "speech correctionist", *"speech corrections"*, "speech therapist", *"speech therapy"*, "speech clinician", *"speech clinic"*, "language pathologist", *"language pathology"*, *"voice therapist"*, *"voice therapy"*, *"voice pathologist"*, *"voice pathology"*, *"logopedist"*, *"logopedics"*, *"communicologist"*, *"communicology"*, *"aphasiologist"*, *"aphasiology"*, *"phoniatrist"*, "language therapist", "language clinician", or any similar title or description of services *or functions.*

(4) "*Speech-language* pathology aide" means any person meeting the minimum requirements established by the board of *speech-language* pathologists and audiologists who works directly under the supervision of a licensed *speech-language* pathologist.

(5) "Audiologist" means a person who practices audiology and who *meets the qualifications set forth in this chapter. A person represents himself to be an audiologist when he* presents himself to the public by any title

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or description of services *or functions that he directly or indirectly performs* incorporating the words "audiologist", *"audiology", "audiometrist", "audiometry", "audiological", "audiometrics",* "hearing clinician", *"hearing clinic",* "hearing therapist", *"hearing therapy", "hearing center", "hearing aid audiologist",* or any similar title or description of services.

(6) "Audiology aide" means any person meeting the minimum requirements established by the board of *speech-language* pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(7) "Practice of *speech-language* pathology" means *rendering or offering to render a service in speech-language pathology to* individuals or groups of individuals *who have or are suspected of having communication disorders. These services include:*

*(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;*

*(b) determining the need for augmentative communication systems and providing training in the use of these systems;*

*(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;*

*(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination; and*

*(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment.*

(8) "Practice of audiology" means *rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders. These services include:*

*(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;*

*(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;*

*(c) fabricating ear molds;*

*(d) providing auditory training and speech reading;*

*(e) conducting tests of vestibular function;*

*(f) evaluating tinnitus;*

*(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and*

*(h) speech or language screening, limited to a pass/fail determination.*

(9) "Association" means the Montana *speech-language* and hearing association.

(10) "ASHA" means the American *speech-language* and hearing association.

(11) "Unethical conduct" means:

(a) the obtaining of any fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide;

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful."

Section 3. Section 37-15-103, MCA, is amended to read:

**"37-15-103. Exemptions.** (1) Nothing in this chapter *prevents* a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this chapter *restricts* or *prevents* activities of a *speech-language* pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a *speech-language* pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and *may* not offer *speech-language* pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, *these* persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter *restricts* activities and services of a student in *speech-language* pathology or audiology from pursuing a course of study in *speech-language* pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study, and *a* fee *may not* accrue directly or indirectly to the student. These persons *must* be designated by the title *"speech-language* pathology (or audiology) intern", *"speech-language* pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this chapter *restricts* a person from another state from offering *speech-language* pathology or audiology services in this state if *these* services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a *speech-language* pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations as the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state *that* has established licensure requirements at least equivalent to those established by this

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chapter or who is the holder of the ASHA certificate of clinical competency in *speech-language* pathology or audiology or its equivalent may offer *speech-language* pathology or audiology services in this state for no more than 30 days in any calendar year if *the* services are performed in cooperation with a *speech-language* pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter *restricts* any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

(7) Nothing in this chapter *restricts* any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and *that* are described in Title 37, chapter 16.

*(8) Nothing in this chapter exempts an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16.*"

Section 4. Section 37-15-305, MCA, is amended to read:

"**37-15-305. Practice pending disposition of application — waiver.** (1) A *speech-language* pathologist or audiologist who holds ASHA certification or equivalent or is licensed in another state and who has made application to the board for a license in this state may perform activities and services of a *speech-language* pathology or audiology nature without a valid license pending disposition of application.

*(2)* The board shall waive the examination and grant a license to applicants who present proof of a current license in a state which has standards equivalent to or greater than those of this state.

*(3)* The board shall waive the examination and grant a license to those who hold the certificate of clinical competence of the American *speech-language* and hearing association in the area for which they are applying for a license.

*(4)* The board shall, on presentation and documentation in writing by a petitioner, have the prerogative of granting licensure to an individual who does not have all the formal requirements specified in this chapter. This prerogative shall be used only for unusual or special circumstances and shall be determined by the board in each individual case."

Section 5. Section 37-15-308, MCA, is amended to read:

"**37-15-308. Renewal.** (1) Each licensed *speech-language* pathologist or audiologist shall pay to the board the fee for the renewal of his license *according to rules adopted by the department.*

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of his license and the amount of the renewal fee. This notice *must* be mailed to each licensed *speech-language* pathologist or audiologist at least 1 month before the expiration of the license.

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(3) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor. *A renewal application must be accompanied with documentation satisfactory to the board that the applicant has fulfilled his continuing educational requirements as provided in 37-15-309.*

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew his license within 2 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of this chapter."

Section 6. **Name change.** Whenever the term "speech pathology" or "speech pathologist" is used in the Montana Code Annotated or laws newly enacted by the 51st legislature, the code commissioner shall change the term to "speech-language pathology" or "speech-language pathologist", respectively.

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 3, 1989.

# CHAPTER NO. 414

[HB 411]

AN ACT AUTHORIZING A LOCAL GOVERNMENT TO ESTABLISH AND ADMINISTER THROUGH LOCAL RULE A SICK LEAVE FUND; AND AMENDING SECTION 2-18-618, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-618, MCA, is amended to read:

"**2-18-618. Sick leave.** (1) Each permanent full-time employee shall earn sick leave credits from the first day of employment. For calculating

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sick leave credits, 2,080 hours (52 weeks x 40 hours) shall equal 1 year. Sick leave credits shall be credited at the end of each pay period. Sick leave credits shall be earned at the rate of 12 working days for each year of service without restriction as to the number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) An employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the employee's salary or wage at the time he terminates his employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment therefor shall be the responsibility of the agency wherein the sick leave accrues. However, no employee forfeits any sick leave rights or benefits he had accrued prior to July 1, 1971. However, where an employee transfers between agencies within the same jurisdiction, he *is* not entitled to a lump-sum payment. In a transfer *between agencies,* the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(6) An employee who receives a lump-sum payment pursuant to this section and who is again employed by any agency *may* not be credited with any sick leave for which the employee has previously been compensated.

(7) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(8) An employee may contribute any portion of his accumulated sick leave to a nonrefundable sick leave fund for state employees and thereby become eligible to draw upon the fund if an extensive illness or accident exhausts his accumulated sick leave. The department of administration shall, in consultation with the sick leave advisory council provided for in 2-15-216, administer the sick leave fund and adopt rules to implement this subsection.

(9) An employee whose hours have been reduced temporarily from 40 hours a week to less than 40 hours a week as a result of a budget deficit shall accrue annual sick leave credits as if he were a full-time employee. A reduction in hours resulting from a budget deficit is temporary if it ends on or before the last day of the current fiscal year.

*(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their*

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*accumulated sick leave.* **(Subsection (8) terminates July 1, 1989—sec. 3, Ch. 707, L. 1985. Subsection (9) terminates June 30, 1989—sec. 7, Ch. 328, L. 1987.)"**

Approved April 3, 1989.

# CHAPTER NO. 415

[HB 466]

AN ACT TO INCREASE THE MAXIMUM VALUE OF GUARANTEED ARREST BOND CERTIFICATES THAT MAY BE ISSUED BY AN AUTOMOBILE CLUB OR ASSOCIATION OR AN INSURANCE COMPANY FROM $100 TO $5,000; AND AMENDING SECTIONS 46-9-411, 46-9-412, AND 46-9-414, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-9-411, MCA, is amended to read:

**"46-9-411. Definition of guaranteed arrest bond certificate.** The term "guaranteed arrest bond certificate" means any printed card or other certificate which:

(1) is issued by an automobile club or association or insurance company to any of its members or insureds; and

(2) is signed by the member or insured and contains a printed statement that the automobile club, automobile association, or insurance company and a surety company or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana:

(a) guarantee the appearance of the person whose signature appears on the card or certificate; and

(b) will, in the event of the failure of the person to appear in court at the time of trial, pay any fine or forfeiture imposed on the person in an amount not exceeding *$5,000.*"

Section 2. Section 46-9-412, MCA, is amended to read:

**"46-9-412. Sureties for guaranteed arrest bond certificates.** (1) A domestic or foreign surety company which has qualified to transact surety business in this state may in any year become surety in an amount not exceeding *$5,000* with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking to become surety.

(2) The undertaking shall be in a form to be prescribed by the commissioner and shall state the following:

(a) the name and address of the automobile clubs, automobile associations, or insurance companies which issued the guaranteed arrest bond certificates with respect to which the surety company undertakes to be surety; and

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(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not exceeding *$5,000* of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted."

Section 3. Section 46-9-414, MCA, is amended to read:

**"46-9-414. Motor vehicle violations — certificates accepted in lieu of cash.** A guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state as provided in 46-9-411 and 46-9-412 shall, when posted by the person whose signature appears *on the certificate*, be accepted in lieu of cash bail in an amount not exceeding *$5,000* as a bail bond to guarantee the appearance of the person in any court, including municipal courts, in this state at *a* time as may be required by the court when the person was arrested for violation of a motor vehicle law of this state or ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate. A guaranteed arrest bond certificate posted as a bail bond in a court in this state is subject to the same forfeiture and enforcement provisions as bail bonds posted in criminal cases, and a guaranteed arrest bond certificate posted as a bail bond in a municipal court in this state is subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 3, 1989.

# CHAPTER NO. 416

[HB 478]

AN ACT GENERALLY REVISING THE LAW RELATING TO FISHING AND HUNTING LICENSING PROCEDURES; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE SPECIFIC INFORMATION AVAILABLE FROM INCOME TAX RETURNS THAT IS REQUESTED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR PURPOSES OF DETERMINING THE RESIDENCY OF APPLICANTS FOR HUNTING AND FISHING LICENSES; ALLOWING THE DEPARTMENT TO PROSECUTE A LICENSE APPLICATION VIOLATION WITHIN 3 YEARS OF APPLICATION; AMENDING SECTIONS 15-30-303 AND 87-2-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-303, MCA, is amended to read:

**"15-30-303. Confidentiality of tax records.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is

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unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the provisions of this chapter or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of said reports or of the facts shown thereby as are pertinent to the action or proceedings and no more.

(3) Nothing herein shall be construed to prohibit:

(a) the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns shall be preserved for 3 years and thereafter until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) of this section shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 1 year thereafter.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either such officer to inspect the return of income of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative only if the

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statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) Further, notwithstanding any of the provisions of this section, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given; *and*

*(c) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses.*"

Section 2. Section 87-2-106, MCA, is amended to read:

"**87-2-106. Application for license.** (1) A license may be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the department. Except as provided in subsections (2) through (4), the statements made by the applicant shall be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(4), the applicant must apply to the director and must submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(4). The director shall process the application in an expedient manner.

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, and fishing license for his spouse, parent, child, brother, or sister who is otherwise qualified to obtain such licenses.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the department or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on any application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor.

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*(7) The department may bring an action to prosecute a violation of this section within 3 years of the date of application for licensure."*

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 3, 1989.

# CHAPTER NO. 417

[HB 524]

AN ACT EXPANDING THE DEFINITION OF MEDICAL ASSISTANCE FOR MEDICAID TO INCLUDE HEALTH SERVICES BY A PUBLIC HEALTH DEPARTMENT; AND AMENDING SECTION 53-6-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-6-101, MCA, is amended to read:

**"53-6-101. Definition of medical assistance.** (1) The definition of medical assistance shall include:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing home services;

(e) physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere;

*(f) health services provided under a physician's orders by a public health department; and*

*(g)* services provided by nurse specialists, as specifically listed in 37-8-202(5), within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider.

(2) It may also include, although not necessarily limited to, the following:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

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(c) private-duty nursing services;

(d) dental services;

(e) physical therapy and other related services;

(f) clinic services;

(g) services provided by social workers licensed under Title 37, chapter 22;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) any additional medical service or aid allowable under or provided by the federal Social Security Act."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 3, 1989.

# CHAPTER NO. 418

[HB 591]

AN ACT REVISING PROCEDURES FOR RELEASE TO CONSUMER CREDIT REPORTING AGENCIES OF INFORMATION CONCERNING CERTAIN CHILD AND SPOUSAL SUPPORT OBLIGATIONS; AUTHORIZING RULEMAKINC; AMENDING SECTIONS 31-3-141, 31-3-151, 31-3-152, 40-5-206, AND 53-2-504, MCA; AND REPEALING SECTION 31-3-127, MCA.

STATEMENT OF INTENT

This bill requires a statement of intent because [section 7] requires the department of revenue to adopt rules establishing procedures for making information concerning certain child and spousal support debt available to consumer credit reporting agencies. It is the intent of the legislature to encourage the reporting and use of support debt information whenever practical. The department is encouraged to provide information to consumer reporting agencies for commercial use by business and financial institutions. The legislature intends that the department by rule provide for a fee to cover the costs of providing support debt information. Technological developments have lowered the cost of information sharing and make it practical for state government to share delinquent support information with private enterprise to a much greater extent than was previously possible. Expanded information sharing is intended to promote the payment of delinquent support obligations and to protect commercial lenders and

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retailers by ensuring that all of a consumer's financial obligations are considered in determining the ability to pay a commercial obligation. Consumers should be discouraged from incurring obligations that they might find difficult to pay because of support enforcement efforts by the department.

The department is directed to promulgate rules for providing notice to obligors owing delinquent support under orders or judgments issued by courts or administrative agencies. Rules should allow the economical issuance of notice to the greatest number of delinquent obligors practical in the ordinary course of agency operations. One notice should be sufficient to allow any delinquent support to be reported whenever it occurs. Rules should require that the agency make a reasonable effort to provide notice prior to the release of information; however, the actual receipt of notice is not required.

The department is instructed to promulgate rules providing for the transfer of information on the greatest number of support delinquencies to the greatest number of credit reporting agencies practical. Electronic transfer of information is encouraged. Support debt information should be provided to consumer reporting agencies in accordance with specific guidelines to be specified in the rules for determining when reporting is inappropriate in a particular case.

The department is further instructed to promulgate rules creating procedures for contesting and determining the accuracy of support debt information. Rules should encourage the informal resolution of disputes as promptly as practicable. Formal adjudication of the accuracy of reported support debt information should be conducted initially by the department, subject to review by the district courts.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 31-3-141, MCA, is amended to read:

**"31-3-141. Actions available to consumer.** (1) A consumer may bring action in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any person who fails to comply with this part.

(2) A person who fails to delete information or incorporate into a report a consumer's statement of dispute because he judges the dispute to be frivolous or irrelevant is liable to suit.

(3) A person, *other than the department of revenue under [section 6],* who furnishes information to a consumer reporting agency which is false or *any person who* furnishes the information with malice or willful intent to injure the concerned consumer is liable to suit.

*(4) A consumer who disputes the result of a reinvestigation conducted under 31-3-124 of the accuracy of information provided by the department of revenue may petition for an administrative hearing pursuant to [section 6].*"

Section 2. Section 31-3-151, MCA, is amended to read:

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"**31-3-151. Jurisdiction — venue.** A consumer may bring suit in any district court in Montana, *except that disputes concerning information provided under [section 6] are subject to administrative and judicial review as provided in [section 6].*"

Section 3. Section 31-3-152, MCA, is amended to read:

"**31-3-152. Rules.** The department of commerce shall enforce this part and promulgate rules necessary to carry out the intent of this part."

Section 4. Section 40-5-206, MCA, is amended to read:

"**40-5-206. Central unit for information and administration — cooperation enjoined — availability of records.** (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, *for receiving and answering requests for information made by consumer reporting agencies under [section 6],* to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies all information and assistance as authorized by this part. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents.

(3) Except as provided in *[section 6] and rules adopted under [section 7],* any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act."

Section 5. Section 53-2-504, MCA, is amended to read:

"**53-2-504. Unauthorized disclosure of information obtained in department of revenue investigations a criminal act.** (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investigation *may* be disclosed except in accordance with the laws applicable to the source of information. *However, the* information may be used or disclosed under *[section 6] and rules adopted under [section 7]* or as necessary in any court action.

(2) Each employee violating the disclosure provisions *is* subject to the criminal charge and penalties applicable to the source of information."

Section 6. **Procedures for making information available to consumer reporting agencies.** (1) The department may make information about a support debt available to consumer reporting agencies, as defined in 31-3-102, upon request. The department may charge a fee to recover the cost of responding to requests for support debt information. The department shall provide advance notice to the obligor concerning the proposed

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release of information. However, lack of actual notice does not preclude the release of information to consumer reporting agencies. The notice may be incorporated into any notice served pursuant to Title 17, chapter 4, part 1; Title 40, chapter 5, part 4; this part; or the federal income tax refund intercept program under 42 U.S.C. 664. The notice must inform the obligor of the methods available for contesting the accuracy of the information.

(2) If contacted by an obligor wishing to contest the accuracy of information proposed for release to consumer reporting agencies, the department shall conduct an informal administrative review, separately or in conjunction with a hearing on any other matter concerning the obligor's support obligation, to determine the accuracy of the information. The accuracy of information provided by the department to consumer reporting agencies may be contested in accordance with the procedures provided in 31-3-124. An obligor dissatisfied with the outcome of a reinvestigation conducted by a consumer reporting agency may receive an administrative hearing on the accuracy of the information by filing a written request with the department. The hearing must be conducted in accordance with 40-5-226, and the resulting findings are subject to judicial review as provided in 40-5-253.

(3) The department shall within 30 days notify all consumer reporting agencies that were provided information pursuant to this section if a reported support debt is paid in full or is no longer being enforced by the department.

Section 7. **Rules.** The department shall adopt rules to implement this section, including rules:

(1) providing for advance notice to the obligor of support debt information requested under [section 6];

(2) establishing the procedure for contesting the accuracy of information proposed for release to consumer reporting agencies;

(3) providing for consideration of the obligor's payment record, the availability of other remedies, and other matters relevant to determining whether the release of information would promote the collection of a support debt or would be inappropriate under the circumstances; and

(4) governing the format and frequency of reports to consumer reporting agencies.

Section 8. **Codification instruction.** [Sections 6 and 7] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 6 and 7].

Section 9. **Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 10. **Repealer.** Section 31-3-127, MCA, is repealed.

Approved April 3, 1989.

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# CHAPTER NO. 419

[HB 605]

AN ACT TO TRANSFER THE STATE DEBT COLLECTION SERVICE FROM THE DEPARTMENT OF REVENUE TO THE STATE AUDITOR; CLARIFYING THE DEPARTMENT OF REVENUE'S PROCEDURES REGARDING TAX OFFSETS; AMENDING SECTIONS 17-4-103 THROUGH 17-4-108, 17-4-111, AND 39-51-3207, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 17-4-105 is being amended to require the department of revenue to adopt rules governing procedures to be used in conducting a hearing relating to tax offsets for the purpose of satisfying unpaid child support obligations.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-4-103, MCA, is amended to read:

**"17-4-103. Collection of claims by state auditor.** (1) In his discretion it is the duty of the state auditor to examine the collection of moneys due the state and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue and against persons who by any means have become possessed of public money or property and failed to pay over or deliver the same and against debtors of the state, of which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

(2) Whenever any person has received moneys or has money or other personal property which belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to and make settlement with the state auditor within the time prescribed by law or, when no particular time is specified, fails to render such account and make settlement or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the state auditor, within 20 days after such requisition, the state auditor must state an account with such person, charging 25% damages and interest at the rate of 10% per annum from the time of the failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated; but in case the state auditor cannot for want of information state an account, he may in any action brought by him aver that fact and allege generally the amount of money or other property which is due to or which belongs to the state.

(3) The *state auditor* may assist in the collection of any delinquent account owing to any state agency.

(4) The *state auditor* is hereby authorized to provide a collection service for the general purpose of centralizing the collection of all debts owing to the state."

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Section 2. Section 17-4-104, MCA, is amended to read:

**"17-4-104. Circumstances when state auditor must assist.** Subject to and in accordance with rules adopted by the *state auditor*, the *state auditor* shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to *his* satisfaction:

(1) A state agency must make all reasonable efforts to collect money owed to it and must determine that the money and any interest or penalties therefor are uncollectible in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined an account owed to it uncollectible, it shall certify to the *state auditor* the amount of the money, interest, and penalties, as accurately as can be determined. The *state auditor* may require submission by the agency of all relevant evidence and other information regarding the debt and may examine the records of any other state agency which may be pertinent in determining the uncollectibility of the debt unless examination is specifically prohibited by law.

(3) If the *state auditor* finds that the debt is uncollectible in accordance with the criteria for uncollectibility of money due that state agency, *he* shall direct the agency to write off the debt on its accounts and transfer the debt to *him*.

*(4) Debts described in 17-4-105(4) need not be determined uncollectible for purposes of this section.*"

Section 3. Section 17-4-105, MCA, is amended to read:

**"17-4-105. Authority to collect debt — offsets.** (1) Once a debt of a state agency has been transferred to the *state auditor, he* shall have the authority to collect it. The *state auditor* may contract with commercial collection agencies for recovery of debts owed the state.

(2) *The* state auditor shall offset any amount due a state agency from a person or entity against any amount, *including refunds or taxes,* owing *the* person or entity by any state agency, *provided the state auditor may not exercise this right of offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. No offset may be made against any amount paid out as child support collected by the department.* The state auditor shall deduct from the claim and draw his warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied *first to debts owed by reason of the nonpayment of child support and then* in such manner as the state auditor, in his discretion, shall determine.

*(3) (a) The department retains the power to offset tax refunds due individuals against taxes owed the state provided the department may not exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.*

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*(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.*

*(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.*

*(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result of that proceeding has become final.*

*(4) (a) A debt resulting from or relating to a child support obligation owed to the department or being collected by the department on behalf of any person or agency may be offset by the state auditor if:*

*(i) the debt is being enforced or collected by the department under Title IV-D of the Social Security Act;*

*(ii) the debt is for repayment of child support payments retained contrary to the assignment at 53-2-613; or*

*(iii) the debt is for costs of fees under any contract, judgment, or administrative order entered in the course of child support enforcement by the department.*

*(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.*

*(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department shall adopt rules necessary to determine the hearing procedures.*

*(5)* If, in the discretion of the state auditor, the person or entity refuses or neglects to file his claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such person or entity; if approved by the department of administration, it shall have the same force and effect as though filed by such person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided."

Section 4. Section 17-4-106, MCA, is amended to read:

**"17-4-106. Agency owed debt to receive all moneys collected.** All moneys collected by the *state auditor* on debts transferred to it by the various state agencies shall be deposited to the account or fund of the agency to which the debt was originally owing."

Section 5. Section 17-4-107, MCA, is amended to read:

"**17-4-107. Write-off procedures.** (1) The *state auditor* may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies which have been transferred to *him* pursuant to 17-4-104 and which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall be established in accordance with subsection (2).

(2) The department of administration may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. Such procedures shall include the reporting of any canceling and writing off of accounts receivable to the next session of the legislature."

Section 6. Section 17-4-108, MCA, is amended to read:

"**17-4-108. Circumstances under which previously written-off debt may be collected.** If a debt previously written off under 17-4-107(1) subsequently becomes collectible, the *state auditor* shall proceed to collect the money due pursuant to 17-4-105(1) and 17-4-106."

Section 7. Section 17-4-111, MCA, is amended to read:

"**17-4-111. Right of hearing to aggrieved persons.** Any person aggrieved from a decision or an action taken under this part shall have the right to present his grievances in the same manner as provided by *17-4-105(3) and subject to the contested case procedures of the Montana Administrative Procedure Act* for taxpayer appeals."

Section 8. Section 39-51-3207, MCA, is amended to read:

"**39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection.** (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest thereon, or overpaid benefits under 39-51-3206 and interest thereon, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the *state auditor* for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the *state auditor* may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the *state auditor*. If less than the full amount of the debt is collected, the *state auditor* shall retain only a proportionate share of the collection fees or costs."

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Effective date.** [This act] is effective January 1, 1990.

Approved April 3, 1989.

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# CHAPTER NO. 420

[HB 610]

AN ACT TO DELETE THE REQUIREMENT THAT CERTAIN BILLS PASSED BY THE LEGISLATURE MUST CONTAIN AN EXTENSION OF EXISTING RULEMAKING AUTHORITY BEFORE THE SECTIONS OF THE BILL MAY BE IMPLEMENTED BY RULE; AMENDING SECTIONS 2-4-305, 5-4-402, AND 5-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-4-305, MCA, is amended to read:

**"2-4-305. Requisites for validity — authority and statement of reasons.** (1) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the Montana administrative register, the differences must be described in the statement of reasons for and against agency action. When no written or oral submissions have been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language.

(3) Each proposed and adopted rule shall include a citation to the specific grant of rulemaking authority pursuant to which it or any part thereof is adopted. In addition, each proposed and adopted rule shall include a citation to the specific section or sections in the Montana Code Annotated which the rule purports to implement.

(4) Each rule proposed and adopted by an agency implementing a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy, as used in the definition set forth in 2-4-102(10), and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

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(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. Such reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) No rule is valid unless adopted in substantial compliance with 2-4-302 or 2-4-303 and this section and unless notice of adoption thereof is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases."

Section 2. Section 5-4-402, MCA, is amended to read:

"**5-4-402. Purpose.** (1) The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies.

(2) The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority."

Section 3. Section 5-4-404, MCA, is amended to read:

"**5-4-404. Statement of intent.** The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill and may be amended in the same manner as the bill."

Section 4. **Effective date — applicability.** (1) [This act] is effective on passage and approval.

(2) [Sections 1 and 2] apply retroactively, within the meaning of 1-2-109, to October 1, 1983, and apply to statutes enacted and rules adopted on or after October 1, 1983.

Approved April 3, 1989.

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# CHAPTER NO. 421

[HB 642]

AN ACT REVISING THE DANGEROUS DRUG TAX ACT; ESTABLISHING A MINIMUM TAX; ALLOWING THE TAX TO BE COLLECTED BEFORE FINES AND FORFEITURES; SUSPENDING THE LIEN ENFORCEMENT PERIOD DURING A PERIOD OF INCARCERATION OF THE PERSON TAXED; REVISING THE DISPOSITION OF TAX PROCEEDS; AND AMENDING SECTIONS 15-25-111, 15-25-115, 15-25-121, AND 15-25-122, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-25-111, MCA, is amended to read:

**"15-25-111. Tax on dangerous drugs.** (1) There is a tax on the possession and storage of dangerous drugs. Except as provided in 15-25-112, each person possessing or storing dangerous drugs is liable for the tax. The tax imposed is determined pursuant to subsection (2). The tax is due and payable on the date of assessment. The department shall add an administration fee of 5% of the tax imposed pursuant to subsection (2) to offset costs incurred in assessing value, in collecting the tax, and in any review and appeal process.

(2) *With the exception that the tax on possession and storage of less than 1 ounce, 1 gram, or 100 micrograms of dangerous drugs must be that set forth below for 1 ounce, 1 gram, or 100 micrograms, the* tax on possession and storage of dangerous drugs is the greater of:

(a) 10% of the assessed market value of the drugs, as determined by the department; or

(b) (i) $100 per ounce of marijuana, as defined in 50-32-101, or its derivatives, as determined by the aggregate weight of the substance seized;

(ii) $250 per ounce of hashish, as defined in 50-32-101, as determined by the aggregate weight of the substance seized;

(iii) $200 per gram of any substance containing or purported to contain any amount of a dangerous drug included in Schedule I pursuant to 50-32-222(1), (2), (4), and (5), or Schedule II pursuant to 50-32-224(1) through (4), as determined by the aggregate weight of the substance seized;

(iv) $10 per 100 micrograms of any substance containing or purported to contain any amount of lysergic acid diethylamide (LSD) included in Schedule I pursuant to 50-32-222(3), as determined by the aggregate weight of the substance seized;

(v) $100 per ounce of any substance containing or purported to contain any amount of an immediate precursor as defined under Schedule II pursuant to 50-32-224(5), as determined by the aggregate weight of the substance seized; and

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(vi) $100 per gram of any substance containing or purported to contain any amount of dangerous drug not otherwise provided for in this subsection (2).

(3) The tax imposed *under* this section *may* be collected *before* any state or federal fines or forfeitures have been satisfied."

Section 2. Section 15-25-115, MCA, is amended to read:

**"15-25-115. Warrant for distraint — suspension of lien during incarceration.** If all or part of the tax imposed by this chapter is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded. *The period during which the lien may be enforced is suspended during any period of incarceration of the person upon whom the tax is imposed.*"

Section 3. Section 15-25-121, MCA, is amended to read:

**"15-25-121. Accounts.** (1) There is an evaluation special revenue account within the state treasury, *for use by the department of family services. One-third* of the taxes collected under 15-25-122 shall be deposited in the account.

(2) There is a chemical abuse assessment special revenue account within the state treasury, *for use by the department of justice. One-third* of the taxes collected under 15-25-122 shall be deposited in the account."

Section 4. Section 15-25-122, MCA, is amended to read:

**"15-25-122. Disposition of proceeds.** (1) The department shall transfer all taxes collected pursuant to this chapter, less the administrative fee authorized in 15-25-111(1), to the state treasurer on a monthly basis.

(2) The state treasurer shall deposit *one-third* of the tax to the credit of the department of *family services* to be used for the youth evaluation program and chemical abuse aftercare programs.

(3) The treasurer shall credit the remaining *two-thirds* of the tax proceeds as follows:

(a) *one-half* to the department of justice to be used for grants to youth courts to fund chemical abuse assessments and the detention of juvenile offenders in facilities separate from adult jails; and

(b) *one-half* to the *account created by 44-12-206(3) if a state government* law enforcement *agency seized the drugs. If a local government law enforcement agency seized the drugs, then that amount must be credited to the treasurer or finance officer of the local government, be deposited in its general fund, and be used to enforce drug laws.*"

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 3, 1989.

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# CHAPTER NO. 422

[HB 677]

AN ACT TO CLARIFY THAT THE REQUIREMENT TO DEPOSIT UNEMPLOYMENT INSURANCE TAX INTO UNEMPLOYMENT TRUST FUND ACCOUNT INCLUDES ANY INVESTMENT INCOME GENERATED ON THE TAX; AND AMENDING SECTION 39-51-404, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-404, MCA, is amended to read:

**"39-51-404. Administrative expenses.** (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such 35 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 34th preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration account but, until expended, shall remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and

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returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) Beginning with the third quarter of 1983, an assessment equal to .1% of all taxable wages provided for in 39-51-1108 and .05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers and may be used by the department for administrative purposes. All such assessments must be deposited in the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature. Any assessments deposited to the unemployment insurance administration account, *including investment income,* that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402."

Approved April 3, 1989.

## CHAPTER NO. 423

[HB 678]

AN ACT REQUIRING NOTIFICATION BY AN OWNER OR OPERATOR PRIOR TO CONDUCTING FOREST PRACTICES ON PRIVATE LAND; PROVIDING FOR ONSITE CONSULTATION BETWEEN THE DEPARTMENT OF STATE LANDS AND THE OPERATOR; AMENDING SECTIONS 76-13-101, 76-13-102, 76-13-104, AND 76-13-408, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-13-101, MCA, is amended to read:

**"76-13-101. Purpose.** *(1)* It is the purpose of this part and part 2 to provide for the protection and conservation of forest resources, range, and water; the regulation of streamflow; and the prevention of soil erosion. It is further the purpose of this part and part 2 to more adequately promote and facilitate the cooperation, financial and otherwise, between the state and public and private agencies which are associated in such work.

*(2) To achieve the conservation of forest and watershed resources, the legislature encourages the use of best management practices in timber sale planning, associated road construction and reconstruction, timber harvesting, site preparation, and related activities and establishes a process to ensure that information on best management practices is provided to owners and operators engaged in forest practices on private land."*

Section 2. Section 76-13-102, MCA, is amended to read:

**"76-13-102. Definitions.** Unless the context requires otherwise, in this part and part 2 the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana Constitution.

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(2) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(3) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(4) "Forest fire" means a fire burning uncontrolled on forest lands.

(5) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires and includes training required to perform those functions.

(6) "Forest fire season" means the period of each year beginning on May 1 and ending on September 30, inclusive.

(7) "Forest fire protection district" means a definite forest land area, the boundaries of which are fixed and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(8) "Forest land" means land which has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with or contiguous to and no further than one-half mile from areas of forest land.

*(9) (a) "Forest practices" means the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and the management of logging slash.*

*(b) The term does not include activities for the purpose of:*

*(i) the operation of a nursery or Christmas tree farm;*

*(ii) the harvest of Christmas trees;*

*(iii) the harvest of firewood; or*

*(iv) the cutting of trees for personal use by an owner or operator.*

*(10)* "Lands" for conservation purposes means all forest lands within this state which are officially classified by the department as forest lands under 76-13-107.

*(11) "Operator" means a person responsible for conducting forest practices. An operator may be the owner, the owner's agent, or a person who, through contractual agreement with the landowner, is obligated to or entitled to conduct forest practices or to carry out a timber sale.*

*(12)* "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, right-of-way, or mineral reservation.

*(13) "Person" means an individual, corporation, partnership, or association of any kind.*

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*(14)* "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

*(15) "Timber sale" means a series of forest practices designed to access, harvest, and regenerate trees on a defined land area."*

Section 3. Section 76-13-104, MCA, is amended to read:

**"76-13-104. Functions of department.** (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, shelterbelts, and forest fire protection.

(2) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

*(3) The department shall require an owner or operator to provide a notification prior to conducting forest practices as provided in [section 4], shall adapt as necessary any procedure used for notification with respect to an agreement under 76-13-408 to ensure that the operator provides information on the location of the forest practices in relation to watershed features, and shall conduct onsite consultations as provided for in [section 4]."*

Section 4. **Notification prior to forest practices — department response — onsite consultation.** (1) An operator or, pursuant to subsection (3), an owner shall notify the department prior to conducting forest practices. The notification may be provided as part of the notification made with respect to an agreement under 76-13-408.

(2) (a) Except as provided in subsection (3), within 5 working days, but not exceeding 7 calendar days, of receiving notification of forest practices, the department shall mail to the operator and, if an address has been provided, to the owner a receipt of notification, information on best management practices for forestry, information on conservation district permit requirements related to stream crossings, and any other information the department believes would assist the operator or the owner with conducting forest practices.

(b) The receipt of notification must include a statement that:

(i) forest practices may proceed; or

(ii) an onsite consultation is required prior to conducting forest practices.

(3) (a) An owner may submit to the department a notice providing an annual, semiannual, or quarterly operating plan that indicates the estimated starting date of forest practices for each timber sale planned by the owner during the operating period. The plan must be submitted no less than 15 days before the beginning of the operating period covered.

(b) Upon receipt of an operating plan, the department may:

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(i) meet with the owner to review the proposed timber sales, discuss watershed concerns, and schedule onsite consultations at appropriate sites; or

(ii) provide a receipt of notification, as described in subsection (2)(b), for individual timber sales. If the department requires an onsite consultation for any of the timber sales, it shall notify the owner of this requirement as soon as possible but no less than 10 calendar days prior to the estimated starting date of forest practices associated with the timber sale. The onsite consultation must then be scheduled according to the provisions of subsections (5) through (7).

(4) The department shall make its decision on whether or not to require an onsite consultation based on whether:

(a) the proposed timber sale is in a high-priority location for watershed resources;

(b) a consultation could contribute to improved watershed management; and

(c) the department has sufficient resources to conduct the consultation.

(5) The department shall schedule an onsite consultation at a time mutually agreeable to the operator, the owner (if he can be contacted and wishes to participate), and the department. Unless otherwise agreeable to the operator and a participating owner, a consultation must be held no later than:

(a) 10 calendar days after the mailing of the notice by the department, if the site is accessible; or

(b) if the site is temporarily inaccessible due to road conditions, weather conditions, or other factors, 10 calendar days after the operator indicates the site is accessible.

(6) The onsite consultation must include representatives of the department, the operator, and, if the owner desires representation, the owner. Representatives of the department of health and environmental sciences, the department of fish, wildlife, and parks, and the local conservation district may also participate but must meet the consultation schedule established under subsection (3)(b) or (5).

(7) If the department and the operator are not able to schedule an onsite consultation within the time limits provided in subsection (5)(a) or (5)(b) or at another mutually agreeable time, the requirement for a consultation is terminated. The operator may then proceed with forest practices immediately upon the expiration of the time limits provided in subsection (5)(a) or (5)(b).

(8) The onsite consultation provided for in this section is intended only for the purpose of providing information to owners and operators and does not confer upon the department or any other agency of state or local government authority to compel an owner or operator to undertake or refrain from undertaking specific management practices that are not otherwise regulated by law or rule.

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(9) The department does not incur any obligation or liability by virtue of a decision to conduct or not conduct an onsite consultation.

(10) (a) Except as provided in subsection (10)(b), the department may require only one notification for each timber sale, even though multiple forest practices may be conducted.

(b) If an operator modifies his proposed forest practices in a manner that substantially alters the potential watershed disturbance, he shall submit a revised notification to the department.

(11) Nothing in this section precludes an operator from undertaking any forest practice in an emergency to prevent watershed damage or the loss of timber resources.

(12) To the extent practicable, the department shall evaluate the application of forest practices as part of an onsite inspection relating to the control of timber slash and debris, conducted under the provisions of Title 76, chapter 13, part 4.

Section 5. Section 76-13-408, MCA, is amended to read:

**"76-13-408. Fire hazard reduction agreement and bond.** (1) Before cutting any forest product, *constructing or reconstructing any road in contemplation of forest product cutting,* or conducting timber stand improvement, such as but not limited to thinning, weeding, or pruning, upon private lands within the state, the person conducting *the* practice shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement with the department and by posting a bond to the state in *a* form and for *an* amount as may be prescribed by the department, conditioned upon full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

(2) The bond shall be released upon completion of the work done in compliance with the terms of the agreement."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 76, chapter 13, part 1, and the provisions of Title 76, chapter 13, part 1, apply to [section 4].

Section 8. **Applicability.** [This act] applies to timber sales that begin after December 31, 1989.

Section 9. **Effective date.** [This act] is effective January 1, 1990.

Approved April 3, 1989.

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# CHAPTER NO. 424

[HB 685]

AN ACT PROVIDING FOR A TAX ABATEMENT PROGRAM FOR HISTORIC PROPERTIES; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** The purpose of [this act] is to provide legislation and guidance for the administration of a property tax abatement program for the restoration, rehabilitation, expansion, and new construction of certified residential and commercial properties located within national register historic districts and properties listed in the National Register of Historic Places. The abatement does not apply to the tax on personal property.

Section 2. **Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Board" means the local review board as provided in [section 5].

(2) "Certification" means approval by the board or state historic preservation office of a property's qualification for the property tax abatement under the terms of [this act].

(3) "Contributing" means a building, site, structure, or object with historic architectural qualities, historic association, or archeological value for which a property is significant because:

(a) it was present during a period of significant local or state history and possesses historic design or architectural integrity reflecting its character at that time or is capable of yielding important information about the period; or

(b) it independently meets the criteria for listing in the National Register of Historic Places.

(4) "Rehabilitation" means the process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those features of the property that are significant to its historical, architectural, and cultural values.

(5) "Restoration" means the process of accurately recovering the form, details, and setting of a property as it appeared when it was originally built or constructed by removing later work or replacing missing earlier work.

Section 3. **Historic property tax abatement — levy limitations.** (1) A historic property undergoing rehabilitation, restoration, expansion, or new construction that meets criteria established by the review process described in [section 5 or 6] may receive a tax abatement during the construction period, not to exceed 12 months, and for up to 5 years following completion of the construction in accordance with subsections (2) and (3). The tax abatement is limited to 100% of the increase in taxable value caused by the rehabilitation, restoration, expansion, or new construction.

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(2) In order to confer the tax benefits described in subsection (1), the governing body of the county or incorporated city or town where the improvement occurs shall establish by resolution the process for the use of the tax abatement provisions described in subsection (1).

(3) Property that receives a tax benefit under [this act] is not entitled to any other exemption or special valuation provided by Montana law during the period of the abatement.

(4) (a) The tax abatement applies only to the number of mills levied:

(i) for high school and elementary school district purposes; and

(ii) by the local governing body approving the abatement.

(b) The abatement may not apply to statewide levies.

Section 4. **Eligibility.** A property that meets the design review criteria in [section 5] is eligible for the property tax abatement if it is:

(1) located within the boundaries of a national register historic district and contributes to the district, as determined by the state historic preservation office;

(2) a newly constructed property within the boundaries of a national register historic district that meets design review criteria as being architecturally compatible with the historic district, as determined by the local review board or the state historic preservation office; or

(3) listed individually in the National Register of Historic Places.

Section 5. **Responsibilities of local governing bodies — local review board — design review process.** (1) A local governing body that approves the tax benefit may designate a local review board to establish an application and review process to certify eligible properties. The review process must include design review criteria based on the secretary of the interior's standards for preservation projects or other standards approved by the state historic preservation office.

(2) The board shall include:

(a) at least three members with professional expertise in history, planning, archeology, architectural history, historic archeology, or another historic preservation-related discipline;

(b) at least one architect; and

(c) up to two members of the general public.

(3) The board shall determine whether a property is eligible under [section 4] and is qualified for the tax abatement. The board shall approve or deny an application for the tax abatement and report its recommendation to the local governing body.

Section 6. **Responsibilities of the state historic preservation office.** (1) If the local governing body approving the tax abatement does not appoint a board under the provisions of [section 5], the state historic

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preservation office shall provide design review assistance and certification for qualifying properties.

(2) The state historic preservation office shall evaluate design review standards submitted to it for approval by the board.

Section 7. **Disqualification and penalty.** (1) Following certification and during the period of tax abatement, a property that is altered in a way that adversely affects those elements that qualify it as historically contributing must be disqualified from receiving the tax abatement.

(2) If a historic property that has received a tax abatement under [this act] is disqualified, the owner is liable for back taxes, interest, and a penalty. These assessments must be extended against the property on the next general real property tax roll, to be collected and distributed in the same manner as the currently assessed real property tax. The back taxes, interest, and penalty must equal the sum of the following:

(a) the difference in the total real property taxes due during the years the tax abatement was in effect and the total real property taxes which would have been due had the special assessment not been in effect for those years;

(b) interest on the amount calculated in subsection (2)(a) at the rate for delinquent property taxes provided for in 15-16-102; plus

(c) a penalty of 15% on the sum of subsections (2)(a) and (2)(b).

(3) Back taxes, interest, or penalty may not be imposed on a property transferred to an ownership that makes the property exempt from property taxation or if the property is destroyed by fire or an act of God.

Section 8. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 7].

Section 9. **Effective date.** [This act] is effective July 1, 1989.

Section 10. **Applicability.** [This act] applies to taxable years beginning after December 31, 1989.

Approved April 3, 1989.

# CHAPTER NO. 425

[SB 87]

AN ACT ALLOWING EXCLUSION UNDER CERTAIN CONDITIONS OF A FAMILY MEMBER FROM COVERAGE UNDER A MOTOR VEHICLE LIABILITY INSURANCE POLICY; INCREASING MANDATORY PROPERTY DAMAGE COVERAGE; AMENDING SECTIONS 61-6-103 AND 61-6-301, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

By amending section 61-6-301, MCA, it is the intent of the legislature to expressly permit named driver exclusions in mandatory motor vehicle

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insurance policies for family members of the policyholder. It is the finding of the legislature that the prohibition against named driver exclusions in the context of the family has the result, in effect, of denying coverage to families who have found their insurance premiums to double or triple due to the Montana supreme court's decision in Iowa Mutual Insurance Company v. Davis, 752 P.2d 166 (1988). In that case, the court held that mandatory liability coverage requirements, as a matter of public policy, prohibited exclusion of a named driver or named drivers from coverage under motor vehicle liability policies.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-6-103, MCA, is amended to read:

**"61-6-103. Motor vehicle liability policy defined.** (1) A "motor vehicle liability policy", as *the* term is used in this part, *means* an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured.

(2) *The* owner's policy of liability insurance *must*:

(a) designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and

(b) insure the person named therein and any other person, as insured, using any motor vehicle or motor vehicles with the express or implied permission of *the* named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of *the* motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each motor vehicle, as follows:

(i) $25,000 because of bodily injury to or death of one person in any one accident and subject to said limit for one person;

(ii) $50,000 because of bodily injury to or death of two or more persons in any one accident; and

(iii) *$10,000* because of injury to or destruction of property of others in any one accident.

(3) *An* operator's policy of liability insurance *must* insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to *the operator's* policy of liability insurance.

(4) *A* motor vehicle liability policy *must* state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability and contain an agreement or be endorsed that insurance is provided thereunder in

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accordance with the coverage defined in this part as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this part.

(5) *A* motor vehicle liability policy need not insure any liability under any workers' compensation law or any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance, or repair of *a* motor vehicle or any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

(6) *A* motor vehicle liability policy *is* subject to the following provisions, which need not be contained therein:

(a) The liability of the insurance carrier with respect to the insurance required by this part *becomes* absolute whenever injury or damage covered by *the* motor vehicle liability policy occurs. *The* policy may not be canceled or annulled as to *the* liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage. No statement made by the insured or on his behalf and no violation of *the* policy *may* defeat or void *the* policy.

(b) The satisfaction by the insured of a judgment for *the* injury or damage *may* not be a condition precedent to the right or duty of the insurance carrier to make payment on account of *the* injury or damage.

(c) The insurance carrier *has* the right to settle any claim covered by the policy, and if *the* settlement is made in good faith, the amount *is* deductible from the limits of liability specified in subsection (2)(b).

(d) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of *this* part constitute the entire contract between the parties.

(7) *A* motor vehicle policy *is not* subject to cancellation, termination, *nonrenewal,* or premium increase due to injury or damage incurred by the insured or operator unless the insured or operator *is* found to have violated a traffic law or ordinance of the state or a city, *is* found negligent or contributorily negligent in a court of law or by the arbitration proceedings contained in chapter 5 of Title 27, or pays damages to another party, whether by settlement or otherwise. In no event may a premium be increased during the term of the policy unless there is a change in exposure.

(8) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and *the* excess or additional coverage *is* not subject to the provisions of this part. With respect to a policy which grants *the* excess or additional coverage, the term "motor vehicle liability policy" *applies* only to that part of the coverage which is required by this section.

(9) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier

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would not have been obligated to make under the terms of the policy except for the provisions of this part.

(10) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectable insurance.

(11) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers, which policies together meet such requirements.

(12) Any binder issued pending the issuance of a motor vehicle liability policy *fulfills* the requirements for such a policy.

(13) A reduced limits endorsement *may* not be issued by any company to be attached to any policy issued in compliance with this section."

Section 2. Section 61-6-301, MCA, is amended to read:

**"61-6-301. Required motor vehicle insurance — family member exclusion.** (1) *(a) Except as provided in subsection (1)(b), an* owner of a motor vehicle which is registered and operated in Montana by the owner or with his permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, as defined in 61-1-102, in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

*(b) Notwithstanding the mandatory motor vehicle liability insurance protection provided for in subsection (1)(a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy.*

(2) A motor vehicle owner who prefers to post an indemnity bond with the department in lieu of obtaining a policy of liability insurance may do so. The bond *must* guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered *must* be paid within 30 days after final judgment is entered establishing *the* liability. The indemnity bond *must* guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and *must* cover the period for which the motor vehicle is to be registered and operated. *The* bond *must* be on a form approved by the commissioner of insurance *and must be* with a surety company authorized to do business in the state."

Section 3. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

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Section 5. **Effective date — applicability.** [This act] is effective July 1, 1990, and applies to motor vehicle liability insurance policies issued, renewed, extended, or reinstated after June 30, 1990.

Approved April 4, 1989.

# CHAPTER NO. 426

[SB 168]

AN ACT PROVIDING FOR CORRECTION OF CLERICAL MISTAKES IN A FINAL DECREE BY THE WATER JUDGE; REQUIRING THAT THE FINAL DECREE ESTABLISH A TABULATION OF WATER RIGHTS AND THEIR RELATIVE PRIORITIES; AMENDING SECTION 85-2-234, MCA; AND PROVIDING RETROACTIVE AND PROSPECTIVE APPLICABILITY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-234, MCA, is amended to read:

**"85-2-234. Final decree.** (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree shall establish the existing rights and priorities within the water judge's jurisdiction of persons required by 85-2-221 to file a claim for an existing right, of persons required to file a declaration of existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

*(4) The final decree shall establish in a form determined to be appropriate by the water judge one or more tabulations or lists of all water rights and their relative priorities.*

*(5)* The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

*(6)* For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

*(7)* For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree shall state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

*(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."*

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this

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act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Retroactive and prospective applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all final decrees that have been issued by the Montana water courts and prospectively to all final decrees issued on or after [the effective date of this act].

Approved April 4, 1989.

# CHAPTER NO. 427

[SB 372]

AN ACT CLARIFYING THE PURPOSE OF AND THE PROCEDURE IN THE MEDIATION PROVISIONS OF THE WORKERS' COMPENSATION ACT; AND AMENDING SECTIONS 39-71-2401, 39-71-2406, 39-71-2409 THROUGH 39-71-2411, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-2401, MCA, is amended to read:

**"39-71-2401. Disputes — jurisdiction — evidence — settlement requirements — mediation.** (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the division jurisdiction must be brought before the division.

(3) An appeal from a division order may be made to the workers' compensation court.

(4) The common law and statutory rules of evidence do not apply in a case brought to hearing before the division.

(5) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) Upon motion of a party *or upon the mediator's own motion*, the mediator has the authority to dismiss a petition if he finds that either

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party did not comply with this subsection. *A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The* mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter."

Section 2. Section 39-71-2406, MCA, is amended to read:

**"39-71-2406. Purpose.** The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under chapter 71 or 72 of this title if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. *It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration."*

Section 3. Section 39-71-2409, MCA, is amended to read:

**"39-71-2409. Duties of mediator.** A mediator shall assist the parties in negotiating a resolution to their dispute by:

(1) facilitating an exchange of information between the parties;

(2) assuring that all relevant *information* is brought forth during the mediation process;

(3) suggesting possible solutions to issues of dispute between the parties;

(4) recommending a solution; and

(5) assisting the parties to voluntarily resolve their dispute."

Section 4. Section 39-71-2410, MCA, is amended to read:

**"39-71-2410. Limitations on mediation proceedings.** (1) *Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(5)(c) or 39-71-2411(7)(c), mediation* proceedings are:

(a) held in private;

(b) informal and held without a verbatim record; and

(c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all but the parties.

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(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) Neither the mediator's report nor any of the information or recommendations contained in it are admissible as evidence in any action subsequently brought in any court of law.

(5) Notwithstanding subsections (1) through (4), a mediator may issue a report and the parties and the mediator may be required to attend a conference *before the workers' compensation court* as set forth in 39-71-2411."

Section 5. Section 39-71-2411, MCA, is amended to read:

**"39-71-2411. Mediation procedure.** (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the division file for the case and may receive any additional documentation or *argument* either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must *fully present the party's case. The argument* is not limited by the rules of evidence.

(5) After the parties have presented all their information and *argument* to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with

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the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 4, 1989.

# CHAPTER NO. 428

[SB 444]

AN ACT TO ENSURE THAT THE WORKERS' COMPENSATION EMPLOYER'S PAYROLL TAX IS MAINTAINED IN A SEPARATE ACCOUNT AND IS USED ONLY TO REDUCE THE UNFUNDED LIABILITY IN THE STATE FUND; AMENDING SECTION 39-71-2502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-2502, MCA, is amended to read:

**"39-71-2502. (Temporary) Findings and purpose.** (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund and is projected to increase. *The legislature recognizes that the fund actuary has determined that on June 30, 1988, a full funding deficiency of $157.3 million existed for the state fund.* While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

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(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability.

*(4) To ensure that the circumstances that contributed to the unfunded liability are not perpetuated, premium rates must be set on an actuarially sound basis as required by state law. The revenue derived from the payroll tax imposed by 39-71-2503 may not be considered revenue for the purpose of establishing premium rates for present or future coverage periods.* **(Terminates June 30, 1991—sec. 10, Ch. 664, L. 1987.)"**

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Coordination instruction.** If Senate Bill No. 405 is passed and approved and if it provides for a tax on employees' wages, then [section 1(4)] of this act is amended so that language referring to "The revenue derived from the payroll tax imposed by 39-71-2503" will read "The revenue derived from the payroll and wage tax imposed by 39-71-2503".

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1989.

# CHAPTER NO. 429

[HB 313]

AN ACT TO CLARIFY THE SKIER RESPONSIBILITY LAW; TO STATE THE DUTIES OF A SKI AREA OPERATOR AND A SKIER; TO PROVIDE THAT A SKIER ACCEPTS RESPONSIBILITY FOR RISKS INHERENT IN THE SPORT; AMENDING SECTIONS 23-2-731 THROUGH 23-2-733 AND 23-2-736, MCA; REPEALING SECTION 23-2-737, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-731, MCA, is amended to read:

**"23-2-731. Purpose.** *The legislature finds that skiing is a major recreational sport and a major industry in the state and recognizes that among the attractions of the sport are risks, inherent and otherwise. The state has a legitimate interest in maintaining the economic viability of the ski industry by discouraging claims based on damages resulting from risks inherent in the sport, defining inherent risks, and establishing the duties of skiers and ski area operators."*

Section 2. Section 23-2-732, MCA, is amended to read:

**"23-2-732. Definitions.** As used in 23-2-731 through *23-2-736*, the following definitions apply:

*(1) "Ski area operator" or "operator" means a person, firm, or corporation, and its agents and employees, having operational and administrative responsibility for ski trails and improvements.*

*(2)* "Skier" means any person admitted to a ski area *or* using the ski trails, and areas and *other improvements within the ski area. The term* does not include a person using an aerial passenger tramway.

*(3)* "Ski trails" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing."

Section 3. Section 23-2-733, MCA, is amended to read:

**"23-2-733. Duties of operator regarding ski areas.** *Consistent with the duty of reasonable care owed by a ski area operator to a skier, a* ski area operator shall:

(1) mark all trail *grooming* vehicles *by furnishing* the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski trails;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails *and the relative degree of difficulty of the ski trails at that area*;

(4) post a notice *requiring the* use of ski-retention devices;

(5) designate *at the start of each day,* by trail board or otherwise, which trails are open or closed *and amend those designations as openings and closures occur during the day;*

*(6) post in a conspicuous location the skier responsibility code that is published by the national ski areas association and that is current on [the effective date of this act]; and*

*(7) post a copy of 23-2-736 in a conspicuous location.*"

Section 4. Section 23-2-736, MCA, is amended to read:

**"23-2-736. Skier's conduct — inherent risks.** (1) A skier *has the duty to conduct himself at all times so that he avoids injury to himself and others and to be aware of the inherent risks of the sport.*

(2) A skier:

*(a) must know the range of his ability and safely conduct himself within the limits of that ability and his equipment so as to negotiate any section of terrain or ski trail safely and without injury or damage. A skier must know that his ability may vary because of trail changes caused by weather, grooming changes, or skier use.*

*(b) shall maintain control of speed and course so as to prevent injury to himself or others;*

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*(c) must abide by the requirements of the skier responsibility code that is published by the national ski areas association and that is current on [the effective date of this act]; and*

*(d) shall obey all posted or other warnings and instructions of the ski area operator.*

(3) A person may not:

*(a)* place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall;

*(b)* cross the track of a passenger tramway except at a designated and approved *point;* or

*(c)* if involved in a skiing accident, depart from the scene of the accident without:

*(i)* leaving personal identification; *or*

*(ii)* notifying the proper authorities *and* obtaining assistance when *he* knows that a person involved in the accident is in need of medical or other assistance.

*(4) A skier must accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of skiing. Risks inherent in the sport of skiing are:*

*(a) variations in skiing terrain, including surface and subsurface snow or ice conditions naturally occurring or resulting from weather changes, skier use, or grooming or snowmaking operations;*

*(b) bare spots and thin snow cover caused by limited snowfall, melting, wind erosion, skier action, grooming, or unconsolidated base;*

*(c) forest growth on designated trails;*

*(d) skiing in an area not designated as a ski trail;*

*(e) clearly visible or plainly marked improvements or equipment;*

*(f) clearly visible or plainly marked mobile equipment and attachments, whether moving or stationary, used by the ski area operator; and*

*(g) avalanches, except on open, designated ski trails."*

Section 5. **Repealer.** Section 23-2-737, MCA, is repealed.

Section 6. **Effective date — applicability.** (1) [This act] is effective on passage and approval.

(2) [This act] applies to courses of action arising after [the effective date of this act].

Approved April 4, 1989.

# CHAPTER NO. 430

[HB 378]

AN ACT REQUIRING THE BOARD OF NURSING TO ESTABLISH A PROGRAM TO ASSIST LICENSED NURSES WHO ARE FOUND TO BE PHYSICALLY OR MENTALLY IMPAIRED BY HABITUAL INTEMPERANCE OR THE EXCESSIVE USE OF NARCOTIC DRUGS, ALCOHOL, OR OTHER SUBSTANCES; AMENDING SECTION 37-8-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-8-202, MCA, is amended to read:

**"37-8-202. Organization — meetings — powers and duties.** (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges which may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for this.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter, and the board may fix reasonable fees for incidental services, all within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to assure interstate endorsement of licenses.

(5) The board of nursing may define the educational requirements and other qualifications applicable to specialty areas of nursing. Specialty areas of nursing are those that require additional professional education beyond the basic nursing degree required of a registered nurse, which additional education is obtained in courses offered in a university setting or its equivalent. The applicant must be certified by a specialty area certifying body. Specialty areas of nursing include nurse practitioners, nurse-midwives, and nurse-anesthetists.

*(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance*

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*or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved April 4, 1989.

# CHAPTER NO. 431

[HB 383]

AN ACT TO GENERALLY REVISE THE HUNTING LICENSING STATUTES; LOWERING THE AGE LIMIT OF PERSONS WHO MUST OBTAIN A WATERFOWL STAMP TO HUNT WATERFOWL; PROHIBITING A PERSON FROM APPLYING FOR, OBTAINING, OR POSSESSING MORE THAN ONE LICENSE OF A CLASS UNLESS AUTHORIZED BY THE FISH AND GAME COMMISSION; AMENDING SECTIONS 87-2-104, 87-2-411, AND 87-2-702, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-2-411, MCA, is amended to read:

"**87-2-411. Stamp required to hunt waterfowl.** (1) It is unlawful for any person *15* years of age or older to pursue, hunt, shoot, or kill waterfowl without first having obtained a valid waterfowl stamp from the department. The fee for such stamp is $5.

(2) For the purpose of this section, the term "waterfowl" means wild ducks, wild geese, brant, and swans."

Section 2. Section 87-2-104, MCA, is amended to read:

"**87-2-104. Number of licenses allowed — fees.** (1) *It is unlawful for any person to apply for, purchase, or possess more than* one license of any one class *or more than one special license for any one species listed in 87-2-701. This provision does not apply to Class B-4 licenses or to licenses issued under subsection (3) for game management purposes. However, when more than one license is authorized by the commission, it is unlawful to apply for, purchase, or possess more licenses than are authorized.*

*(2)* The department may prescribe rules and regulations for the issuance or sale of a replacement license in the event the original license is lost, stolen, or destroyed upon payment of *a fee not to exceed* $5.

*(3)* When authorized by the commission for game management purposes, the department may issue more than one Class A-3, Class A-4, Class B-7, Class B-8, or special antelope license to an applicant. An applicant for these game management licenses is not at the time of application required to hold any license or permit of that class.

*(4)* The fee for any resident or nonresident license of any class issued under subsection *(3)* must be set annually by the department and may not exceed the regular fee provided by law for that class *or species*."

Section 3. Section 87-2-702, MCA, is amended to read:

"**87-2-702. Restrictions on special licenses.** *(1)* A person who has killed or taken any game animal, except a deer or an antelope, during the current license year is not permitted to receive a special license under this chapter to hunt or kill a second game animal of the same species.

*(2)* The commission may require applicants for special permits authorized by this chapter to obtain a valid big game license for that species for the current year prior to applying for a special permit.

*(3)* After March 27, 1987, a person may, during his lifetime, lawfully take only one grizzly bear in Montana with a license authorized by 87-2-701."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective dates.** [This act] is effective on passage and approval.

Approved April 4, 1989.

# CHAPTER NO. 432

[HB 399]

AN ACT GENERALLY REVISING THE WATER USE LAWS; REQUIRING A POSSESSORY INTEREST IN THE PROPERTY ON WHICH WATER WILL BE APPLIED IN ORDER TO OBTAIN A PERMIT OR TO APPROPRIATE GROUNDWATER; MODIFYING THE CRITERIA FOR ISSUING A PERMIT AND FOR APPROVING A CHANGE APPLICATION; CLARIFYING THE JURISDICTION OF A WATER COMMISSIONER TO MAINTAIN HEADGATES; AMENDING SECTIONS 85-2-306, 85-2-311, 85-2-402, AND 85-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-306, MCA, is amended to read:

"**85-2-306. Exceptions to permit requirements.** (1) Groundwater may be appropriated only by a person who has *a possessory interest in the*

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*property where the water is to be put to beneficial use and* exclusive property rights in the groundwater development works or, *if another person has rights in the groundwater development works,* the written consent of the person with those property rights. Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation shall be the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate shall be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of groundwater by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) of this section, with the department to perfect the water right. The filing of a claim of existing water right pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation shall be the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of less than 100 gallons per minute, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a

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perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 2. Section 85-2-311, MCA, is amended to read:

**"85-2-311. Criteria for issuance of permit.** (1) Except as provided in subsections (2) through (4), the department shall issue a permit if the applicant proves by substantial credible evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply *at the proposed point of diversion*:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) *during* the period *in* which the applicant seeks to appropriate, the amount requested is *reasonably* available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; *and*

*(f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.*

(2) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

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(c) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(3) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (3) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (2) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (3)(b)(ii) and (3)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

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(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(4) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized appropriation, diversion, impoundment, use, or other restraint. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

Section 3. Section 85-2-402, MCA, is amended to read:

**"85-2-402. Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

*(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.*

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands *for* water for future beneficial purposes, including municipal water

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supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and

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(5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312*(5)*.

(8) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(9) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(10) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(11) A change in appropriation right contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may

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knowingly permit, aid, or assist in any manner such unauthorized change in appropriation right. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 4. Section 85-5-302, MCA, is amended to read:

**"85-5-302. Maintenance of headgates and measuring devices.** All persons using water from any stream or ditch whereon a water commissioner is appointed *are* required to have suitable headgates at the point *where* a ditch taps a stream and shall also, at some suitable place on the ditch and as near the head as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in *the* ditch. In case any person or persons shall fail to place or maintain a proper measuring appliance, it *is* the duty of *the* water commissioner not to apportion or distribute any water through *the* ditch. The commissioner *shall* notify all parties interested by certified mail or in person 1 week before making the annual repair or cleaning of any stream or ditch or performing necessary labor or expenses to divert water to any ditch. The sending of a certified letter to the last known post-office address of any interested party *is* prima facie evidence of the fact that he was duly notified. Any work in the way of repairing a ditch made necessary by any emergency may be done without such notice when injury would result from delay."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1989.

## CHAPTER NO. 433

[HB 477]

AN ACT REVISING THE FUNDING FOR THE NOXIOUS WEED MANAGEMENT TRUST FUND; ADDING $1 TO THE FEE IN LIEU OF TAX ON OFF-HIGHWAY VEHICLES FOR THE NOXIOUS WEED MANAGEMENT TRUST FUND; INCREASING THE WEED CONTROL FEE ON MOTOR VEHICLES; AMENDING SECTIONS 23-2-803 AND 61-3-510, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-803, MCA, is amended to read:

**"23-2-803. Fee in lieu of tax on off-highway vehicles — disposition of fees.** (1) There is a fee in lieu of tax on off-highway vehicles to

be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is *$26*. In all other cases the fee is *$16*.

(b) The age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(2) *(a) Except as provided in subsection (2)(b), the* county treasurer shall distribute all fees in lieu of tax collected on off-highway vehicles pursuant to this section in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

*(b) The county treasurer shall remit $1 of the fee in lieu of tax collected on an off-highway vehicle to the department of agriculture for deposit in the noxious weed management trust fund provided for in 80-7-811.*"

Section 2. Section 61-3-510, MCA, is amended to read:

"**61-3-510. Weed control fee.** (1) A special weed control fee of *$1.50* must be assessed on the annual registration or reregistration of each motor vehicle subject to registration. The fee must be collected by the county treasurer.

(2) For purposes of this section, motor vehicle includes:

(a) motor vehicle as defined in 61-1-102;

(b) motorcycle as defined in 61-1-105;

(c) motor-driven cycle as defined in 61-1-106; and

(d) quadricycle as defined in 61-1-133.

(3) The following vehicles are exempt from the fee:

(a) vehicles owned or controlled by the United States or a state, county, or city;

(b) vehicles exempt from payment of registration fees by 61-3-321(7); and

(c) vehicles or equipment which is not self-propelled or which requires towing when moved upon a highway of this state."

Section 3. **Coordination.** If House Bill No. 477 and House Bill No. 165 are both passed and approved, the fee in lieu of tax provided for in [section 5] of House Bill No. 165 is increased by $1.

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved April 4, 1989.

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# CHAPTER NO. 434

[HB 568]

AN ACT GENERALLY REVISING LAWS REGARDING DETENTION OF CERTAIN YOUTHS; PROHIBITING THE DETENTION OF AN ALLEGED DELINQUENT YOUTH IN AN ADULT DETENTION FACILITY EXCEPT UNDER CERTAIN CIRCUMSTANCES; REQUIRING A COUNTY TO PAY THE COST OF A COURT-ORDERED EVALUATION OF A YOUTH; REVISING PROVISIONS REGARDING AVAILABILITY OF YOUTH DETENTION FACILITIES; AUTHORIZING THE APPROPRIATION OF FUNDS TO ASSIST COUNTIES IN PROVIDING YOUTH DETENTION FACILITIES AND SERVICES; PERMITTING COUNTIES TO APPLY FOR THESE FUNDS; REQUIRING THE DEPARTMENT OF FAMILY SERVICES TO ADOPT RULES; AMENDING SECTIONS 7-32-2221, 41-3-1101, 41-3-1103, 41-5-206, 41-5-306, 41-5-308, 41-5-523, 41-5-802, 41-5-808, 41-5-809, AND 53-30-229, MCA; AMENDING SECTION 16, CHAPTER 475, LAWS OF 1987; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 12 and 13] require the department of family services to adopt rules governing procedures for distributing funds to counties for juvenile detention facilities and services. The rules must require a county applying for funds to provide necessary information to enable the department to determine the financial and administrative feasibility of establishing or acquiring the desired detention facility or services. In addition, the rules must require a county to submit information regarding the safety and habitability of the facility and its compliance with state and federal requirements, such as availability of medical and educational services and physical recreation.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-32-2221, MCA, is amended to read:

**"7-32-2221. Segregation of prisoners — confinement of juveniles.** (1) Each county jail must contain a sufficient number of rooms to allow the sheriff, jail administrator, or private party jailer to separately confine classes of prisoners as may be necessary to the security and safety of those prisoners and the jail.

(2) Persons who are violent, disturbed, or inebriated must not be kept or put into the same room with other prisoners, nor shall male and female prisoners (except husband and wife) be kept or put into the same room.

(3) Juveniles may be confined only under conditions that comply with 41-5-308."

Section 2. Section 41-3-1101, MCA, is amended to read:

**"41-3-1101. Establishment of substitute care for youth.** The legislature, in recognition of the wide and varied needs of youth in need of

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care, delinquent youth, and youth in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide such facilities and services through local nonprofit corporations, *counties*, and the department of family services."

Section 3. Section 41-3-1103, MCA, is amended to read:

**"41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, *and detention facilities and services* for youth in need of care, youth in need of supervision, and delinquent youth, *as defined in 41-5-103*;

(b) exercise licensing authority over all *detention facilities as defined in 41-5-103*, youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

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(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in such facilities."

Section 4. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, or mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as included in 45-9-101;

(I) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(H);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

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(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 53-30-212; however, no youth under 16 years of age may be confined in the state prison.

*(9) A youth whose case is transferred to district court may not be detained in an adult detention facility before final disposition of the case unless the youth court judge determines that:*

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*(a) the youth facilities do not provide adequate security; and*

*(b) detention in the adult facility is in an area physically, aurally, and visually separate from that of adults.*"

Section 5. Section 41-5-306, MCA, is amended to read:

"**41-5-306. (Temporary) Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1), in a detention facility *as defined in 41-5-103*, or in a jail or other facility for the detention of adults only if the facilities in subsection (1) are not available or do not provide adequate security and the detention is in an area physically, *aurally*, and visually separate and removed from that of adults.

**41-5-306. (Effective July 1, 1989) Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only in:

(a) a licensed youth foster home as defined in 41-3-1102;

(b) a facility operated by a licensed child welfare agency; or

(c) a licensed youth group home as defined in 41-3-1102.

(2) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be placed in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in the facilities described in subsection (1) or in a detention facility *as defined in 41-5-103.*"

Section 6. Section 41-5-308, MCA, is amended to read:

"**41-5-308. Placement of youth before probable cause hearing.** (1) Before the probable cause hearing, a youth alleged to be a *delinquent* youth may be held in a jail or other facility for adults only if:

(a) the facilities in 41-5-306 are not available or do not provide adequate security;

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(b) the placement is in an area physically, *aurally,* and visually separate from those of adults; and

(c) it appears that public safety and protection reasonably require the youth to be held.

(2) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with a crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility."

Section 7. Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department. The department shall thereafter determine the appropriate placement, supervision, and rehabilitation program for the youth after considering the recommendation of the youth placement committee as provided in 41-5-527; provided, however, that:

(i) in the case of a youth in need of supervision, such commitment does not authorize the department to place the youth in a state youth correctional facility. The court shall determine whether continuation in the home would be contrary to the welfare of the child and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is a serious juvenile offender, the judge may specify that the youth be placed in physical confinement in an appropriate facility only if the judge finds that such confinement is necessary for the protection of the public;

(iii) a youth may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(iv) a youth is under the supervision of a youth probation officer, except that a youth placed in a youth correctional facility is supervised by the department;

(c) order such further care and treatment or evaluation that does not obligate funding from the department without the department's approval;

(d) order restitution by the youth or his parents;

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

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(f) require the performance of community service;

(g) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(h) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(i) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate; or

(j) such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community.

(2) At any time after the youth has been taken into custody *and before final disposition*, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated for a period not to exceed 45 days. The *county commissioners are responsible for* the *cost* of *the* evaluation *and may contract with the department or other public or private agencies to obtain evaluation services.*

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(5) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(6) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(7) The order of commitment to the department shall read as follows:

ORDER OF COMMITMENT

State of Montana )
) ss.
County of ..... )

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ...., a minor of this county, .... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of family services.

It is ordered that .... be committed to the department of family services until .....

The names, addresses, and occupations of the parents are:

Name Address Occupation

.....

.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....

Judge"

Section 8. Section 41-5-802, MCA, is amended to read:

**"41-5-802. Shelter care and detention facilities.** *(1) The county commissioners in each county shall provide for the availability of detention facilities for youths.*

*(2)* (a) *The* county commissioners may *maintain*, by purchase, lease, or otherwise, a detention facility, which *may* not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths may be detained until final disposition.

(b) The county commissioners may appoint *necessary* personnel who have charge of *the* facility and of the youths detained therein.

(c) The compensation of *the* personnel *must* be fixed by the county commissioners, and *the* compensation and the *maintenance* of *the* facility *must* be paid out of the county treasury. *These funds* may be supplemented by state appropriation and federal funds.

(d) The county commissioners shall provide for inspection of any county detention facility every 3 months. Inspection must include but is not limited to health, fire safety, security, rehabilitation programs, recreation, treatment of youths, and personnel training.

(e) The judge of the youth court for the county shall inspect any detention facility at least once a year.

*(3) The county commissioners may contract with the department or public or private agencies to purchase detention services.*

*(4)* (a) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(b) *The* facility *must* be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(c) *The* facility *must* be separate and apart from any facility housing adults charged with criminal offenses.

(d) State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of *the* facility.

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(e) *The* facility *must* be furnished in a comfortable manner and be as nearly as possible like a family home.

(f) *The* facility may be operated in conjunction with a detention facility."

Section 9. Section 41-5-808, MCA, is amended to read:

**"41-5-808. Detention facility for more than one county or city.** (1) *To satisfy the requirements of 41-5-802(1), a* detention facility may be established and maintained through cooperation or by cooperative agreement of more than one county or city.

(2) Each detention facility must be licensed by the department.

(3) The county determined by the court as the residence of the youth is responsible for the cost of the detention of the youth, including medical expenses incurred during detention.

(4) Counties receiving detention services must be billed monthly for services provided during the preceding month and may be refused services if bills are not paid within 60 days of receipt of a statement."

Section 10. Section 41-5-809, MCA, is amended to read:

**"41-5-809. Rules.** The department shall *adopt* rules governing the:

*(1)* licensing procedures for regional and county detention facilities; *and*

*(2) procedures for distributing funds for detention facilities and services as provided in [sections 12 and 13]*."

Section 11. Section 53-30-229, MCA, is amended to read:

**"53-30-229. Hearing on alleged violation of aftercare agreement — right to appeal outcome.** (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth shall be granted a hearing at the site of the alleged violation or in the county where the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the youth correctional facility from which he was released or a different plan for treatment should be pursued by the department of family services.

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth shall be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against him and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons *that* justify or mitigate the violation;

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(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

(4) The department shall appoint a referee, who *may* not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, he shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department *may* not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he may abscond or be removed from the community. *The department shall determine the place and manner of detention and is responsible for the cost of the detention.* Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement *are* as provided in 41-3-1111, 41-5-303(2) through (6), 41-5-306, and 41-5-308.

(8) If the decision is made to return the youth to the youth correctional facility from which he was released and the youth appeals that decision, he shall await the outcome of the appeal at *the* facility."

Section 12. **State funding for detention facilities or services.** (1) To the extent that funds are appropriated under [section 13], a county may apply to the department for funds to assist in the purchase, construction, maintenance, or operation of detention facilities or services.

(2) A county requesting funds shall submit to the department a written plan describing the facilities or services to be funded.

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(3) The department shall evaluate the plan to determine if funding is appropriate. In evaluating the plan, the department shall consider:

(a) whether each facility is licensed or otherwise approved by the department;

(b) the estimated number of youths expected to use each facility or service;

(c) the cost of operating each facility or providing the service;

(d) the review of a written plan by the county's local youth services advisory council provided for in 52-1-203; and

(e) any other standards adopted by rule by the department.

Section 13. **Detention facility and service fund.** (1) The legislature may appropriate funds to the department to implement [section 12].

(2) The department shall maintain a detention facility and service fund containing funds appropriated under subsection (1).

(3) Each fiscal year, the department shall reserve an amount equal to 10% of the previous year's appropriation under subsection (1) for distribution to counties experiencing financial emergencies in providing detention facilities and services. A county shall apply for emergency funding under this subsection in accordance with rules adopted by the department.

Section 14. Section 16, Chapter 475, Laws of 1987, is amended to read:

"Section 16. **Effective dates — termination date.** (1) Except as provided in subsections (2) and (3), sections 1 through 13 are effective October 1, 1987.

(2) The bracketed language in subsection (5) of section 1 is effective July 1, *1991*.

(3) The bracketed language in subsection (3) of section 9 terminates July 1, *1991*."

Section 15. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 16. **Codification instruction.** [Sections 12 and 13] are intended to be codified as an integral part of Title 41, chapter 5, part 3, and the provisions of Title 41, chapter 5, part 3, apply to [sections 12 and 13].

Section 17. **Effective date.** [Sections 5 and 7 of this act] are effective July 1, 1991.

Approved April 4, 1989.

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# CHAPTER NO. 435

[HB 504]

AN ACT TO CLARIFY THAT A PROSECUTION FOR DELIBERATE, MITIGATED, OR NEGLIGENT HOMICIDE MAY BE COMMENCED AT ANY TIME; AMENDING SECTION 45-1-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for *deliberate, mitigated, or negligent* homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the offense was committed if the victim was less than 16 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when

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the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(6) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1989.

# CHAPTER NO. 436

[HB 534]

AN ACT TO AMEND THE INTERSTATE COMPACT ON JUVENILES TO ALLOW THE EXTRADITION OF A YOUTH CHARGED WITH BEING A DELINQUENT; AND AMENDING SECTION 41-6-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Section 41-6-101, MCA, is amended by adding a new Article XVI to The Interstate Compact on Juveniles that reads:**

"Article XVI. Rendition.

(1) This amendment shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of Articles V and VI of this compact shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of this compact shall be forwarded by the judge of the court in which the petition has been filed."

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of 41-6-101, and the provisions of 41-6-101 apply to [section 1] and [section 1] applies to 41-6-101.

Approved April 4, 1989.

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# CHAPTER NO. 437

[HB 602]

AN ACT INCREASING TO 100 FEET THE MAXIMUM LENGTH OF A VEHICLE OR COMBINATION OF VEHICLES ALLOWABLE UNDER SPECIAL PERMIT AND SUBJECTING THOSE VEHICLES TO A SPEED LIMIT OF 55 MILES PER HOUR; AMENDING SECTIONS 61-8-312 AND 61-10-124, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-8-312, MCA, is amended to read:

**"61-8-312. Special speed limitations on trucks, truck tractors, motor-driven cycles, and vehicles towing housetrailers.** (1) No person shall operate any truck or truck tractor the gross weight of which exceeds 8,000 pounds at a speed greater than 65 miles per hour on those completed sections of interstate and four-lane divided highways and 60 miles per hour on those completed sections of primary and secondary highways. However, the truck nighttime speed limit shall not exceed that of automobiles as stated in 61-8-303.

(2) No person shall operate *a vehicle subject to a term permit under 61-10-124(3)(d) or a* truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(4) at a speed greater than 55 miles per hour.

(3) No person shall operate any motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles per hour unless such motor-driven cycle is equipped with a headlamp or lamps which are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

(4) No person shall operate a vehicle which is towing a housetrailer at a speed greater than a maximum of 50 miles per hour. **(Subsection (2) terminates July 1, 1989—sec. 8, Ch. 474, L. 1987.)"**

Section 2. Section 61-10-124, MCA, is amended to read:

**"61-10-124. (Temporary) Special permits — fee — cranes.** (1) As used in this section, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in subsections (3)(b), *(3)(d),* and (6), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 *must* be paid for all movements under special permits on the public highways under the jurisdiction of the department of highways.

(3) (a) Except as provided in subsections (3)(b), *(3)(d),* and (6), term or blanket permits may not be issued for an overwidth vehicle, combination

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of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsection (6). Special permits for vehicle combinations may specify and special permits under subsection (6) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fee required by 61-10-203 and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

*(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.*

(4) Except as provided in subsection (3)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of highways, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of highways has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200.

(6) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system as defined in 60-1-103 and within a 2-mile

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radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) no individual cargo unit of the combination may exceed 28 ½ feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary.

**61-10-124. (Effective July 1, 1989) Special permits — fee — cranes.** (1) As used in this section, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in *subsections* (3)(b) *and (3)(d)*, in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 *must* be paid for all movements under special permits on the public highways under the jurisdiction of the department of highways.

(3) (a) Except as provided in *subsections* (3)(b) *and (3)(d)*, term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. Special permits for vehicle combinations of more than two trailers are not permitted under this section. Special permits for vehicle combinations may specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit

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covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fee required by 61-10-203 and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

*(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.*

(4) Except as provided in subsection (3)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of highways, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of highways has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1989.

# CHAPTER NO. 438

[HB 649]

AN ACT TO INCREASE FROM $1,500 TO $2,500 THE MAXIMUM AMOUNT OF A CLAIM THAT CAN BE HEARD IN SMALL CLAIMS COURT; TO INCREASE FROM $1,500 TO $2,500 THE MAXIMUM AMOUNT OF A COUNTERCLAIM THAT CAN BE DETERMINED IN SMALL CLAIMS COURT; AND AMENDING SECTIONS 3-10-1004, 3-12-106, 25-34-102, 25-34-103, 25-34-207, 25-35-502, 25-35-503, AND 25-35-606, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-10-1004, MCA, is amended to read:

**"3-10-1004. Jurisdiction — removal from district court.** (1) The small claims court has jurisdiction over all actions for the recovery of

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money or specific personal property when the amount claimed does not exceed *$2,500*, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed *$2,500*. The small claims court shall hear any action so removed from the district court."

Section 2. Section 3-12-106, MCA, is amended to read:

**"3-12-106. Jurisdiction — removal from district court.** (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:

(a) such action arises out of a contract, express or implied;

(b) the amount of the claim, exclusive of costs, does not exceed *$2,500*; and

(c) the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed *$2,500*.

(3) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed *$2,500*. The small claims court shall hear any action so removed from the district court."

Section 3. Section 25-34-102, MCA, is amended to read:

**"25-34-102. Jurisdiction — joinder — interpleader.** (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when such action arises out of a contract, express or implied, the amount of the claim, exclusive of costs, does not exceed *$2,500*, and the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed *$2,500*.

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed *$2,500*."

Section 4. Section 25-34-103, MCA, is amended to read:

**"25-34-103. Removal from district court.** A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed *$2,500*. The small claims court shall hear any action so removed from the district court."

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Section 5. Section 25-34-207, MCA, is amended to read:

**"25-34-207. Defendant's counterclaim.** (1) If the defendant wishes to assert a counterclaim against the plaintiff, he shall file a written answer setting forth his counterclaim against the plaintiff and shall cause the answer to be served upon the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service is made upon the defendant.

(2) A counterclaim or setoff may not exceed *$2,500*. If a counterclaim or setoff is asserted in excess of *$2,500*, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether plaintiff's claim is discharged thereby, leaving defendant to prosecute the balance of his claim in appropriate district court action."

Section 6. Section 25-35-502, MCA, is amended to read:

**"25-35-502. Jurisdiction.** The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed *$2,500*, exclusive of costs, and the defendant can be served within the county where the action is commenced."

Section 7. Section 25-35-503, MCA, is amended to read:

**"25-35-503. Removal from district court.** A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed *$2,500*. The small claims court shall hear any action so removed from the district court."

Section 8. Section 25-35-606, MCA, is amended to read:

**"25-35-606. Defendant's counterclaim.** (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service shall be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed *$2,500*. If a counterclaim or setoff is asserted in excess of *$2,500*, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged thereby, leaving the defendant to prosecute the balance of his claim in an appropriate justice or district court action.

(3) The counterclaim shall be made on a blank substantially in the following form:

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IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
..... COUNTY, MONTANA
BEFORE ....., JUSTICE OF THE PEACE

.....

.....
Plaintiff
vs.
.....
.....
Defendant(s)

Counterclaim
Case No. ...

.....

Comes now the defendant, being first duly sworn, upon oath, and alleges that defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of $....., for .....
.....
.....
which sum is now due, together with defendant's costs herein expended.

Dated this ..... day of ....., 19....

.....
Defendant
.....
Defendant's address

Subscribed and sworn to before me this ..... day of ....., 19....

.....
Justice of the peace
By:.....
Clerk, small claims division"

Approved April 4, 1989.

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# CHAPTER NO. 439

[HB 650]

AN ACT AUTHORIZING THE BOARD OF COMMISSIONERS OF AN IRRIGATION DISTRICT TO CREATE A SUBDISTRICT WITHIN THE DISTRICT; PROVIDING FOR THE CONSTRUCTION OF IRRIGATION IMPROVEMENTS WITHIN A SUBDISTRICT AND FOR THE ISSUANCE OF BONDS TO FINANCE THE IMPROVEMENTS; ALLOWING THE PRIVATE SALE OF BONDS OF IRRIGATION DISTRICTS TO CERTAIN GOVERNMENTAL ENTITIES; CLARIFYING THAT BONDS OF IRRIGATION DISTRICTS ISSUED TO THE STATE OF MONTANA AND ITS AGENCIES AND DEPARTMENTS DO NOT CONSTITUTE INDEBTEDNESS; ALLOWING SPECIAL ASSESSMENTS OR LEVIES ON PROPERTY OWNERS WITHIN A SUBDISTRICT; AND REVISING OTHER PROVISIONS RELATING TO IRRIGATION DISTRICTS TO ALLOW FOR SUBDISTRICTS; AMENDING SECTIONS 85-7-1904, 85-7-1907, 85-7-1908, 85-7-1910, 85-7-1911, 85-7-1921, 85-7-2001, 85-7-2012 THROUGH 85-7-2014, 85-7-2019, 85-7-2021, 85-7-2023, 85-7-2101 THROUGH 85-7-2104, 85-7-2107 THROUGH 85-7-2110, 85-7-2112, AND 85-7-2114 THROUGH 85-7-2116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Authority to create subdistricts — petition — requirements.** (1) The board of commissioners of an irrigation district created and organized under Title 85, chapter 7, parts 1 and 15, may establish one or more subdistricts within the irrigation district to provide for and finance the cost of irrigation works, including gravity irrigation systems, gravity measure systems, or sprinkling systems, that would irrigate lands in the subdistrict but not other lands in the district. A subdistrict may be established only upon a petition signed by at least 60%, in number and acreage, of the holders of title or evidence of title to lands to be included within the subdistrict. The petition must be addressed to and filed with the board of commissioners and be accompanied by a map or plat of the proposed subdistrict.

(2) The petition must state:

(a) the name suggested for the proposed subdistrict;

(b) a general description of the land to be included in the proposed subdistrict;

(c) the name of each holder of title or evidence of title to the lands in the proposed subdistrict, as determined according to 85-7-101 and 85-7-102 and, if a holder is a nonresident of the county or counties in which the proposed district lies, the post-office address of the nonresident owner, if known;

(d) the general water source from which the land in the proposed subdistrict will be irrigated and the general character of the works, water

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rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in or for the benefit of the proposed subdistrict; and

(e) a request that the land within the proposed subdistrict be made a subdistrict according to the provisions of [sections 1 through 4].

Section 2. **Notice of hearing on petition to create subdistrict.** (1) Upon the filing of a petition to create a subdistrict, the board of commissioners of the irrigation district shall by order fix the time and place for a hearing on the petition and shall direct that notice of the hearing be given.

(2) The notice of the hearing must state:

(a) the name of the proposed subdistrict and its purpose;

(b) the time and place of the hearing;

(c) a general description of the land proposed to be included in the subdistrict;

(d) a general description of the water source; and

(e) the general character of the works, water rights, canals, and other property proposed to be acquired or constructed in or for the benefit of the subdistrict.

(3) The board shall publish notice of the hearing at least once a week for 2 successive weeks in a newspaper published in each county in which the proposed subdistrict is located. The first publication must occur not less than 15 days before the date of the hearing.

(4) Notice of the hearing must also be mailed not less than 15 days before the date of the hearing to each holder of title or evidence of title to land within the proposed subdistrict. However, a defect in the notice or failure to give mailed notice does not affect the validity of the proceeding for the creation of a subdistrict under [sections 1 through 4].

Section 3. **Hearing on petition to create subdistrict.** (1) The board of commissioners shall hear the petition at the time specified in the notice provided under [section 2]. The board may adjourn the hearing for lack of sufficient notice or other good cause. The hearing must be completed within 3 weeks of the initial hearing.

(2) Upon application of the petitioners or any interested person or persons, the board shall allow the petition to be amended and may order that additional notice be given.

(3) At the hearing, any person whose land or property rights may be damaged or benefited by the creation of the subdistrict or by the irrigation works or improvements to be acquired or constructed in or for the benefit of the subdistrict may appear and submit oral or written testimony.

Section 4. **Review of petition — creation of irrigation subdistrict.** (1) After the hearing on the creation of the proposed subdistrict, the board of commissioners shall by resolution create the subdistrict if it finds that:

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(a) the petition substantially complies with the provisions of [section 1]; and

(b) it is in the best interests of the holders of title or evidence of title in the subdistrict and the district to establish the subdistrict.

(2) The board shall describe in the resolution the land to be included in the subdistrict. The land does not need to be contiguous but must be located within the district.

(3) In creating the subdistrict proposed by the petition, the board may alter the geographic area of the subdistrict or the scope or type of irrigation improvements to be undertaken in or for the benefit of the subdistrict, subject to the following conditions:

(a) The board may not include within the subdistrict land not identified by the petition as part of the proposed subdistrict unless notice and hearing on the addition are provided according to [sections 2 and 3].

(b) The board may not exclude land from the proposed subdistrict if:

(i) the land can be irrigated from the same general source and by the same general system of works proposed for other land in the subdistrict; and

(ii) the owner or owners of the land file a written statement with the board requesting that the land be included in the subdistrict.

(c) The board shall exclude land from the proposed subdistrict if it determines that:

(i) the land will not benefit from irrigation obtained from the works of the proposed subdistrict; or

(ii) the land has appurtenant water rights or can be irrigated from sources more feasible than the proposed subdistrict and the owner or owners of the land have not filed a written statement with the board consenting to inclusion of the land in the subdistrict.

(4) For purposes of including or excluding land from a proposed subdistrict, the board of commissioners may subdivide any tract into 40-acre or smaller parcels.

(5) The creation of a subdistrict by the board of commissioners is conclusive on all owners of land within the subdistrict unless, within 30 days after adoption by the board of the resolution establishing the subdistrict, a holder of title or evidence of title to land within the subdistrict petitions the district court of the county in which the greater portion of the proposed subdistrict is located, for review of the creation of the subdistrict. Upon the timely filing of a petition for review of the creation of the subdistrict, the district court shall conduct a hearing and shall issue a decision in substantially the same manner required for review of a petition for an irrigation district under 85-7-105 through 85-7-108. The district court shall base its decision on whether the requirements of [sections 1 through 3] and subsections (1) through (4) of this section have been met.

(6) A proceeding initiated in the district court for review of the validity of the bond issue or issues to finance the irrigation improvements to be

undertaken in the subdistrict may be consolidated with a proceeding initiated under this section. Any indebtedness or liability incurred by the board of commissioners of the district with respect to or on behalf of a subdistrict, including bonds issued by the district, may not constitute a charge or lien on any land in the district except the land within the subdistrict.

Section 5. **Alteration and determination of subdistrict acreage.** (1) Land may be deleted from or added to the subdistrict in the same manner provided for irrigation districts in 85-7-1801 through 85-7-1810.

(2) Land in a subdistrict that is deleted from an irrigation district remains in the subdistrict unless it is specifically deleted from the subdistrict according to subsection (1).

(3) The taxable area of the land in the subdistrict may be determined in the manner provided in 85-7-1841 through 85-7-1845.

Section 6. **Dissolution of subdistrict.** A subdistrict created under [section 4] may be dissolved by order of the district court of the county in which the greatest portion of lands of the subdistrict are located, in the manner provided for dissolution of irrigation districts in Title 85, chapter 7, part 10.

Section 7. **Private sale of bonds to certain governmental entities.** The district may sell bonds issued under Title 85, chapter 7, part 20, to the United States, the state of Montana, or any agency, department, or instrumentality of these governments by negotiation and without public advertisement or solicitation of bids.

Section 8. Section 85-7-1904, MCA, is amended to read:

**"85-7-1904. Acquisition of water and waterworks by board.** (1) The board shall have power and authority to:

(a) appropriate water in the name of the district;

(b) acquire, by purchase, lease, or contract, water and water rights; additional waters and supplies of water; canals, reservoirs, dams, and other works already constructed or in the course of construction; and

(c) acquire by purchase, lease, contract, condemnation, or other legal means:

(i) lands and rights in lands for rights-of-way, for reservoirs, for the storage of needful waters, and for dam sites and necessary appurtenances; and

(ii) other lands and property as may be necessary for the construction, use, maintenance, repair, improvement, enlargement, and operation of any district *or subdistrict* system of irrigation works.

(2) The board *may* contract with the owner or owners of canals, reservoirs, dams, and other works purchased and in the course of construction for the completion thereof.

(3) *A* purchase, lease, or contract for purchase of any water, water rights, canals, reservoirs, reservoir sites, dam sites, irrigation works, or

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other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates, and specifications or for the purchase of machinery for pumping plants or for the erection of buildings, aqueducts, and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of $150,000 or 25% of the district's annual operation and maintenance budget, whichever is greater, *may not be entered into by the district* without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district *or, if the purchase, lease, or contract substantially benefits a subdistrict in the district, by a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict.* Any splitting or division of *a* purchase, lease, or contract with the purpose or intention of avoiding or circumventing the provisions of this section *renders the* divided or split contract or contracts void."

Section 9. Section 85-7-1907, MCA, is amended to read:

**"85-7-1907. Board power to provide sufficient water.** *The* board may also construct and maintain the necessary dams, reservoirs, and works for the collection and distribution of water for the district *or any subdistrict in the district,* from one or more sources and from different and additional sources; operate such works; secure, in any of the manners provided in this chapter, additional water supplies from the same or different sources; and do any and every lawful act necessary to be done in order that sufficient water may be furnished for irrigation purposes to all the lands in the district *or subdistrict* included at the time of its organization or at any time thereafter."

Section 10. Section 85-7-1908, MCA, is amended to read:

**"85-7-1908. Board powers over district property.** (1) The board *may* take conveyances or other assurances for all property acquired by it under the provisions of this chapter, in the name of the district, to and for the uses and purposes *in this chapter.*

(2) The legal title to all property acquired by or for any irrigation district *or any subdistrict in the district* under the provisions of this chapter shall immediately and by operation of law vest in *that* district, as set forth in this chapter. The board of commissioners *may* hold, use, maintain, acquire, manage, occupy, and possess *that* property, as provided *in this chapter.* Any property acquired by the district may be conveyed to the United States for the construction, operation, and maintenance of works by the United States for the benefit of the district *or a subdistrict in the district* under any contract that may be entered into with the United States pursuant to this chapter."

Section 11. Section 85-7-1910, MCA, is amended to read:

**"85-7-1910. Board power to dispose of district property.** (1) The board of commissioners *may,* with the written consent of a majority in number and acreage of the owners of the lands in the district *or, if the leased property substantially benefits a subdistrict in the district, of a majority in number and acreage of the owners of lands within the subdistrict,* to lease in whole or in part the system of canals and works or water

belonging to the district, whenever *the* leasing *is considered* for the benefit of the district *or subdistrict, if the leased property substantially benefits the subdistrict.* When *the* board contemplates the leasing of the canals or works or water of *a* district *or subdistrict,* it shall declare *the availability of the lease* by resolution or order and give notice thereof by *publication* in some newspaper published in the county in which the office of *that* irrigation district is situated at least 2 calendar weeks prior to the making of any lease. *A* lease *may not* be made unless a majority in number and acreage of the holders of title or evidence of title to the lands in the district *or, if the lease substantially benefits a subdistrict, a majority in number and acreage of the holders of title or evidence of title to lands within the subdistrict,* file with the board a written consent to make *the* lease. *The* lease *may not* interfere with any rights that have been established by law at the time *the* lease is made, nor *may the* lease operate to deprive any owner or owners of land in *the* district of the use of water from such works upon *the* lands. The board of commissioners shall require a good and sufficient bond to secure the faithful performance of the lease by the lessee.

(2) In addition to all other powers granted any irrigation district existing under the laws of Montana, for the purpose of securing financial aid in any form from the department of natural resources and conservation, an irrigation district may convey, assign, transfer, and set over to the department all or any part of its property, including all water rights, rights-of-way, and easements for reservoirs, reservoir sites, canals, ditches, laterals, and headgates, as may be required by the department as a condition to furnishing financial aid or assistance.

(3) If *an* irrigation district has ceased operation, *the* district prior to its dissolution *may* convey, assign, transfer, and set over to any person or association of persons all or any part of its property *described* in subsection (2), for the purpose of irrigating and reclaiming any or all other land which can be served and irrigated."

Section 12. Section 85-7-1911, MCA, is amended to read:

**"85-7-1911. Apportionment of water by board.** (1) The board of commissioners shall apportion the water for irrigation among the lands in the district *or a subdistrict in the district* in a just and equitable manner, and the maximum amount apportioned to any land shall be the amount that can be beneficially used on *the* land. *The* amount of water *is* appurtenant to the land and inseparable from *it* but subject to reduction as provided *in this chapter.*

(2) In the event of a shortage of water, the amount of water delivered to each particular tract or piece of land shall be reduced proportionately.

(3) All surplus water belonging to the district may be sold or disposed of by the board for the benefit of the district *or for the benefit of a subdistrict if the surplus water is derived from water that attaches to the substantial benefit of the subdistrict.*

(4) All water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of congress, the rules and

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regulations of the secretary of the interior, and the provisions of *the* contract."

Section 13. Section 85-7-1921, MCA, is amended to read:

**"85-7-1921. Distribution system defined.** The words "distribution system", as used in 85-7-1922 through 85-7-1925, *denotes* the entire works and property of all irrigation districts, including main ditches and canals, laterals, bilaterals, headgates, flumes, spillways, boxes, and all other appliances and means by which the waters of any irrigation district, *including a subdistrict in the district,* are or shall be apportioned or distributed for use."

Section 14. Section 85-7-2001, MCA, is amended to read:

**"85-7-2001. Limitations on debt-incurring power.** (1) The board of commissioners or other officers of the district may not incur any debt or liability, either by issuing bonds or otherwise, except as provided in this chapter.

*(2) An* irrigation district may *not* become indebted, in any manner or for any purpose in any one year, in an amount exceeding 18.75% of the assessed valuation of the district, except as provided in subsection *(4).*

*(3) An irrigation district may not incur indebtedness, in any manner or for any purpose in any one year, on behalf of any subdistrict in the district in an amount exceeding 18.75% of the assessed valuation of the subdistrict, except as provided in subsection (4).*

*(4)* (a) For the purpose of organization; for any of the immediate purposes of this chapter; to make or purchase surveys, plans, and specifications; for stream gauging and gathering data; or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district and may *issue* warrants of the district.

(b) For the purpose of organization, for any of the immediate purposes of this chapter, or to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur (in addition to the 18.75% *limitations* of *subsections (2) and (3)*) an additional indebtedness not exceeding 12.5% of the assessed valuation of the district and may *issue* warrants of the district therefor.

(c) The *limitations* of *subsections (1) through (3) do* not apply to warrants issued for unpaid interest on the valid bonds of any irrigation district.

(d) The *limitations* of *subsections (1) through (3) do* not apply to bonds *or obligations issued to the state of Montana, the United States, or any department, agency, or instrumentality of these governments if the bonds or obligations are issued:*

*(i) pursuant to a loan program specifically authorized by the legislature; or*

*(ii) to finance in whole or in part a project authorized by the legislature.*

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*(e) The limitations of subsections (1) through (5) do not apply to any bonds* issued under this chapter pursuant to a provision *that* expressly supersedes the limitation.

*(5)* Any debt or liability incurred in excess of the limitations provided by the irrigation district laws is void."

Section 15. Section 85-7-2012, MCA, is amended to read:

**"85-7-2012. Purposes for which bonds may be issued.** The board of commissioners of a district established under the provisions of *Title 85, chapter 7,* part 1, may authorize and issue negotiable *fully registered bonds or negotiable* coupon bonds *of* the district for the purpose of providing the necessary funds for:

(1) constructing the necessary irrigation canals and works, including drainage works, and constructing works for the generation and distribution of electricity within the district and for acquiring the property and rights necessary therefor;

(2) acquiring, by purchase or otherwise, waters, water rights, canals, reservoirs, reservoir sites, irrigation works, drainage works, and works for the generation and distribution of electricity, whether *the* works are constructed or partially constructed;

(3) meeting the *expenses* incurred incident to the construction or acquisition of *the* works and property, including administrative, engineering, and legal expenses;

(4) assuming, as principal or guarantor, indebtedness to the United States on account of district lands;

(5) providing a sufficient amount of money to pay the interest on all bonds of the district for a period not exceeding 5 years;

(6) redeeming or paying all or any portion of the existing indebtedness of the district, evidenced by outstanding bonds; delinquent interest coupons, *overdue claims for interest,* and accrued interest; or warrants, together with all delinquent and accrued interest, whether *the* indebtedness has or may become payable at the option of the district, by consent of the bondholders, or by any *other* lawful means;

*(7) establishing a reserve for the payment of principal and interest on bonds of the district in an amount determined by the board to be reasonably required to market the bonds; or*

*(8)* otherwise carrying out the provisions of the irrigation district laws."

Section 16. Section 85-7-2013, MCA, is amended to read:

**"85-7-2013. Petition requirements.** *(1) Bonds* provided for in 85-7-2012 through 85-7-2015 may *not* be authorized or issued by or on behalf of any irrigation district organized *under this chapter or by an irrigation district on behalf of a subdistrict located in the district* and a contract may *not* be made with the United States as provided in 85-7-1906 except upon a petition signed by:

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*(a)* at least 60%, in number and acreage, of the holders of title or evidence of title to lands included within the district *or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 60% in number and acreage of the holders of title or evidence of title to lands within the subdistrict;* or

*(b)* at least 75%, in number and acreage, of the holders of title or evidence of title to *the* lands who are residents of the county or counties in which lands of the district are situated *or, if the bonds are issued on behalf of or if the contract relates to a subdistrict, at least 75% in number and acreage of the holders of title or evidence of title to the lands who are residents of the county or counties in which lands of the subdistrict are situated.*

*(2)* The petition *must* be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes *of the bonds*, have attached *to it* an affidavit verifying the signatures to the petition, and be filed with the secretary of the board. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of *the* district, *the* bonds may be authorized and issued in the manner provided for by 85-7-2019."

Section 17. Section 85-7-2014, MCA, is amended to read:

**"85-7-2014. Procedure after petition filed.** Upon the filing of the petition, the board of commissioners shall, by appropriate order or resolution, authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the petition; fix the numbers, denominations, and maturity or maturities of the bonds; specify the rate of interest *on the bonds* and whether payable annually or semiannually; designate the place *and method* of payment of the bonds and the interest *on the bonds*, within or *outside* the state of Montana; prescribe the form of the bonds; and provide for the levy of a special tax or assessment as provided in this chapter on all the lands in the district *or for a levy on a subdistrict if the bonds are issued on behalf of the subdistrict,* for the irrigation and benefit of which the district *or subdistrict* was organized and the bonds are issued or the contract is to be made, sufficient in amount to pay the interest on and principal of the bonds when due and all amounts to be paid to the United States under any contract between the district and the United States *for* which bonds of the district have not been deposited with the United States as provided in 85-7-1906."

Section 18. Section 85-7-2019, MCA, is amended to read:

**"85-7-2019. Refunding bonds.** (1) Any irrigation district may issue refunding bonds.

(2) An irrigation district may issue refunding bonds for the purpose of redeeming or paying the indebtedness or any portion *of the indebtedness* of the district, whether represented by existing and outstanding bonds, interest coupons, or warrants, including accrued and unpaid interest on the bonds, coupons, and warrants, and whether *the* indebtedness is due or not due or has or may become payable at the option of the district, by consent

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of the bondholders or warrant holders, or by any *other* legal means and whether *the* indebtedness is now existing or may be created, and funds in the treasury of the district are not available for the payment of the *indebtedness*. The refunding bonds may be issued in one or more series. The petition for the refunding bonds *must be* signed as required by law by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within the district, *or by at least 60% in number and acreage of the holders of title or evidence of title to the lands within a subdistrict if the bonds to be refunded were issued by the district on behalf of the subdistrict,* and addressed to the board of directors or commissioners of the district. *The petition* may contain the following specifications, in addition to the matters *otherwise* required by law:

(a) how many series of bonds shall be issued; and

(b) the terms, conditions, and liens of the bonds and the terms and conditions upon which each of the series of bonds shall be exchanged for outstanding bonds of the district if the *bonds* are to be exchanged and not sold.

(3) The specifications provided for in subsection (2), when set forth in the petition, are controlling upon the board of directors or commissioners. The petitioners shall in the specifications set forth the contract of exchange to be made, with particularity. The contract may include any term, requirement, grant, transfer of property or rights, covenant, or condition considered by the petitioners to be in the best interest of the district *or of the subdistrict if the bonds that are the subject of the contract were issued by the district on behalf of the subdistrict.* The petition shall state that the board of directors or commissioners of the district may authorize and direct the issuance of bonds according to the specifications of the petition, make any such contract, and bind the irrigation district under the contract."

Section 19. Section 85-7-2021, MCA, is amended to read:

**"85-7-2021. Liens of bonds.** (1) All bonds issued *under this chapter* and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 85-7-1906, shall be a lien upon all the lands originally or at any time included in the district, *or upon lands in a subdistrict if the bonds are issued on behalf of the subdistrict,* for the irrigation and benefit of which *the* irrigation district *or subdistrict* was organized and *the* bonds were issued and for the benefit of which such contract between the district and the United States was made, except upon *any* lands as may at any time be included in *the* district *or subdistrict* on account of the exchange or substitution of water under the provisions of 85-7-1912; and all such lands *are* subject to a special tax or assessment for the payment of the interest on and principal of *the* bonds. All amounts to be paid to the United States under any contract between the district and the United States and *the* special tax or assessment *constitute* a first and prior lien on the land against which levied to the same extent and with like force and effect as taxes levied for state and county purposes.

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(2) All liens created *under this section* remain upon the lands *until the obligations of the district for the bonds are discharged, as provided by law or by the resolution of the board of commissioners authorizing their issuance.*"

Section 20. Section 85-7-2023, MCA, is amended to read:

"**85-7-2023. Notice of sale of bonds.** *Except as provided in [section 7], before* making any sale the board shall, by resolution at a meeting, declare its intention to sell a specified amount of the bonds and the day and hour and place of sale. The board shall cause *the* resolution to be entered in the minutes and notice of the sale to be given by publication at least once a week for 3 successive calendar weeks in *a* newspaper in the county where the office of the board of commissioners is located, and *the notice may be published* in any other newspaper at *the board's* discretion. The notice shall state that sealed proposals will be received by the board at its office, for the purchase of bonds, until the day and hour named in the resolution. At the time appointed the board shall open the proposals and award the purchase of the bonds or any portion or portions thereof to the highest responsible bidder or bidders. *The* board may reject any or all bids. In case no award is made, the board may either readvertise *the* bonds or any part *of the bonds* for sale or sell the *bonds* or any part *of the bonds* at private sale. Coupons evidencing unearned interest *must* be detached and canceled."

Section 21. Section 85-7-2101, MCA, is amended to read:

"**85-7-2101. Tax or assessment to pay bonds and interest.** (1) All bonds and the interest thereon issued *under this chapter* and all payments due or to become due to the United States under any contract between the district and the United States *for* which *the* bonds of the district have not been deposited with the United States as provided in 85-7-1906 *must* be paid by revenue derived from a special tax or assessment levied upon all the lands included in the district, *or upon all lands in a subdistrict of the district if the bonds are issued by the district on behalf of the subdistrict,* except upon those lands that have been included in the district *or subdistrict* on account of the exchange or substitution of water under the provisions of 85-7-1912. All lands in the district, *or in a subdistrict if the bonds are issued on behalf of the subdistrict,* at the time the bonds are issued and all lands subsequently included which are chargeable under the provisions of this chapter remain liable to be taxed and assessed for the payment of the bonds and interest and all payments due or to become due to the United States under any contract between the district and the United States *for* which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(2) The board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district mentioned in 85-7-2014, shall provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district, *or in a subdistrict if the bonds are to be issued on behalf of the subdistrict,* and subject to taxation and assessment, sufficient in amount to meet the interest on the bonds promptly when and as the *interest* accrues and to discharge the principal *of the bonds* at their maturity or respective maturities

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and to meet all payments due or to become due to the United States under any contract between the district and the United States *for* which bonds of the district have not been deposited with the United States as provided in 85-7-1906, at the times *the* payments by *the* contract become due and payable."

Section 22. Section 85-7-2102, MCA, is amended to read:

**"85-7-2102. Added lands to pay proportional share of bonded indebtedness.** (1) Where a district *or subdistrict* is extended after the construction of works of irrigation, including drainage works, to include other irrigable lands, *the* included lands *are* chargeable with *the* proportion of the bonded indebtedness incurred or authorized to be incurred by any district *or subdistrict* and *the* proportion of the indebtedness incurred under any contract between the district and the United States *for* which bonds of the district have not been deposited with the United States as provided in 85-7-1906, as the district court shall order, as provided in 85-7-1808 through 85-7-1811 and 85-7-1841 through 85-7-1845. The board of commissioners of the district shall provide for the levy of a special tax or assessment against *the* included lands on account of *the* bonds and the interest *on the bonds* and on account of any payments under any contracts between the district and the United States *for* which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(2) *The* special tax or assessment shall be levied and collected as and in the manner as the special tax assessment against the lands of the original district *or subdistrict* on account of the payments under any contract between the district and the United States *for* which bonds of the district have not been deposited with the United States as provided in 85-7-1906, and on account of which *the* bonds and the interest *on the bonds* is provided for, levied, and collected. Upon the extending of any district *or subdistrict*, the total of *the* bond indebtedness or indebtedness due to the United States shall be reapportioned, spread, and equalized upon and over the entire area, as provided in 85-7-2021."

Section 23. Section 85-7-2103, MCA, is amended to read:

**"85-7-2103. All irrigable lands chargeable alike.** (1) All irrigable lands in each irrigation district *and all lands in each subdistrict of the district*, except *those* lands that are included within the district because of the exchange or substitution of water under the provisions of 85-7-1912, shall pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be an administrative charge of $5 to $25 against each separately owned tract of land regardless of its size, as provided in 85-7-2104.

(2) Whenever water used for the irrigation of any lands within an irrigation district *or subdistrict* is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation shall be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in *a* manner as may be determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment *must* be made by the board of commissioners and included each year in the assessment provided

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for by 85-7-2104. The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, *must* be determined by the board in *a* manner and upon notice to the persons interested in the district *or subdistrict* as the board in its rules may provide.

(3) Whenever a contract has been made with the United States, the lands within the district *or of a subdistrict if the contract substantially benefits the subdistrict*, whether originally included or later annexed to the district *or subdistrict*, shall pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued *under the reclamation laws* and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States.

(4) Whenever a contract has been made with the state of Montana, the lands within the district *or of a subdistrict if the contract substantially benefits the subdistrict*, whether originally included or later annexed to the district *or subdistrict*, shall pay in accordance with state laws and public notices and rules issued *under the laws* and in compliance with any contract made by the state with the owners of the lands and in compliance with the contract between the district and the state.

(5) Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands irrigated or that can be irrigated through the built portion of the project shall pay for the cost of operating that portion of the project serving them with irrigation water and also shall pay *the* portion of the interest charges as its irrigable area bears to the irrigable area of the entire project.

(6) Whenever lands have appurtenant thereto a partial water right or partial rights in a system of irrigation other than that of the district *or subdistrict*, the amounts payable *must* be equitably apportioned.

(7) Whenever the owners of a portion of the lands within an irrigation district choose to install a gravity system to irrigate those lands, the cost of constructing the gravity system *must* be apportioned among and levied upon the lands irrigated by the gravity system in a manner determined to be equitable by the board. The levy *must* be included each year in the assessment charged under 85-7-2104."

Section 24. Section 85-7-2104, MCA, is amended to read:

**"85-7-2104. Annual tax levy — apportionment when tracts divided.** (1) *(a)* On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

*(i)* the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

*(ii)* the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district *for* which

bonds of the district have not been deposited with the United States as provided in 85-7-1906.

*(b)* The board shall levy against each 40-acre tract or fractional lot, as designated by United States *government* survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) of land in the district, that portion of the respective total amounts to be raised which the total irrigable area of any tract *or lot* bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district *must* be assessed and required to pay the same amount as every other acre of irrigable land therein, unless otherwise specifically provided *by the board.* The board may charge $5 to $25 against each separately owned tract of land, regardless of its size.

*(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.*

(2) *(a) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to [section 4] shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.*

*(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may charge $5 to $25 against each separately owned tract or lot of land, regardless of its size.*

*(3)* In the event that the ownership of any 40-acre tract or other subdivision of land in the district *or subdistrict is* divided after a special tax or assessment against the *land* has been levied, each of the owners of *a* tract or *subdivision is* entitled to have *the* special tax or assessment equitably apportioned to and against *the* divisions of *the* tract or *subdivision*, so that each owner *is* enabled to pay *a* special tax or assessment against his portion of *the* tract or subdivision and have the *land* discharged from the lien. In no event shall the charge against any separately owned tract of land be less than $5."

Section 25. Section 85-7-2107, MCA, is amended to read:

**"85-7-2107. Procedure for the determination of irrigable area.** (1) For the purpose of determining the number of acres of irrigable lands in each 40-acre tract or fractional lot as designated by United States *government* survey or platted lot, if land is subdivided in lots and blocks (or

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whenever land is owned in less than 40-acre tracts or in less than the platted lot, in each tract) of land in the district *or subdistrict*, the board of commissioners of any irrigation district established under part 1, whenever considered advisable and at any time except as otherwise provided, may cause a careful topographical survey and map of the lands to be made, as well as a specific examination of the character of the soil of each tract. Upon completion of the survey and maps and examination, the board shall give notice that at a meeting of the board, to be held at the office of the board on a day to be fixed in the notice, the board will determine the irrigable area of each tract of land in the district *or subdistrict* and that it will hear and consider any objection on the part of any landowner in the district, *or in a subdistrict if only the irrigable area of the subdistrict is being determined,* to the determination and to adjustment of the irrigable area of the district *or subdistrict* or of any lands within any tract or subdivision *of the district or subdistrict.* It is not necessary to describe the tracts in the notice. The notice *must* be given by publication once a week for 2 successive calendar weeks in a newspaper of general circulation in the county where the office of the board is located, and whenever lands of any irrigation district *or subdistrict* lie in more than one county, the notice *must* also be published in a newspaper or newspapers of general circulation in each county. The last publication of the notice *must* be at least 5 days prior to the date fixed for the meeting.

(2) At the meeting, the board shall determine and fix the number of acres in each tract or subdivision irrigable from the works or proposed works of the district *or subdistrict* and shall hear all persons interested who may appear and shall continue in session from day to day (exclusive of Sundays and legal holidays) as long as may be necessary and until the determination of irrigable area is completed. The board shall hear and receive all evidence offered, including maps and surveys caused to be prepared by it as well as maps and surveys prepared by any owner of lands. Upon determination, the irrigable area fixed *is* the acreage upon which any special tax or assessment *must* be levied, and each irrigable acre shall pay at the same rate as every other acre of irrigable land in the district *or subdistrict*, except as otherwise provided by law."

Section 26. Section 85-7-2108, MCA, is amended to read:

**"85-7-2108. Taxes to be lien upon land.** Any special tax or assessment levied for any purpose is a lien upon the entire 40-acre tract or fractional lot as designated by United States *government* survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, against each such tract) of land in the district *or subdistrict* of which the irrigable area forms a part, and the lien shall attach to the entire tract as of January 1 in the year in which the special tax or assessment is levied."

Section 27. Section 85-7-2109, MCA, is amended to read:

**"85-7-2109. List of all lands in district or subdistrict to be prepared.** Upon completing the determination, the board shall fix, by appropriate resolution or order, the total acreage and the irrigable acreage of each tract or subdivision and shall *prepare* a list of all lands in the district *or subdistrict. The* list *must* contain an accurate description of each 40-acre

tract or fractional lot as designated by United States *government* survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, then of each such tract) of land in the district *or subdistrict*, the total acreage and the number of irrigable acres as fixed and determined, and the name of the owner or holder of title or evidence of title, ascertained as provided in 85-7-101 and 85-7-102. This list, when completed and adopted, *must* be filed in the office of the board and shall remain there for public inspection. A certified copy of the resolution and list *must* be filed with the county clerk and recorder of each county in which any portion of the lands in the district is situated. The lands not situated in the county in which *the* copy is filed *must* be omitted from the copy."

Section 28. Section 85-7-2110, MCA, is amended to read:

**"85-7-2110. Nonirrigable lands not to be taxed.** *A* special tax or assessment may *not* be levied against any 40-acre tract or fractional lot as designated by United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever lands are owned in less than 40-acre tracts or in less than the platted lot, against each such tract) found by the board of commissioners to contain no irrigable land. *A* lien created after the order of determination *may not* attach to any *nonirrigable* tract, nor may the owner or owners of any *nonirrigable* tract or tracts have any vote or votes in any proceeding or election under the provisions of Chapter 146 of the Laws of 1909 or any amendment thereof or act supplementary thereto, after the making of *the* order, unless their land or a portion *of their land* is found by the board to contain an area irrigable from the works or proposed works of the district *or subdistrict*."

Section 29. Section 85-7-2112, MCA, is amended to read:

**"85-7-2112. Confirmation of board actions by district court.** (1) Within 60 days after the resolution adopting the list, the board of commissioners may petition the district court for confirmation of *its* acts in determining the irrigable area and in refunding or canceling any taxes or assessments. The majority in number and acreage of the holders of title or evidence of title to lands in the district *or the majority in number and acreage of the holders of title or evidence of title in the subdistrict if only the irrigable area of the subdistrict is to be reviewed, determined* as provided in 85-7-101 and 85-7-102, may likewise within *the* 60-day period petition the district court for review of the actions of the board. However, one of these proceedings, if prosecuted to determination, is exclusive of the other. *The* court may order any assessment of taxes upon any land or lands to be reduced or raised according to the irrigable area as found by the court or taxes previously levied upon any area shown to be excessive to be refunded or canceled.

(2) The provisions of 85-7-1808 through 85-7-1810 regarding the procedure as well as the right and time to appeal apply to any proceeding instituted pursuant to this section, provided nothing in this section affects or impairs the lien of any bonds issued by the district. If confirmation proceedings are held and a certified copy of the order of confirmation is filed with the county clerk and recorder of the county in which any portion of the lands is situated, it is not necessary to file in the office the certified

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copy of the resolution and order of the board or of the list provided for in this section."

Section 30. Section 85-7-2114, MCA, is amended to read:

**"85-7-2114. Apportionment of costs when bonds issued.** (1) Whenever a petition for the issuance of bonds of any irrigation district established under the provisions of part 1 has been filed as provided in 85-7-2012 through 85-7-2015, the board of commissioners of the district shall examine or cause to be examined each 40-acre tract or fractional lot as designated by United States public survey or platted lot, if land is subdivided in lots and blocks (or whenever land is owned in less than 40-acre tracts or in less than the platted lot, each such tract) of land in the district *or of land in a subdistrict if the bonds are to be issued on behalf of the subdistrict,* and cause a careful topographical survey and map to be made in the manner provided for in 85-7-2107. Upon *the* examination, the board shall determine the number of irrigable acres in each tract and shall apportion and distribute the cost of the works or improvements for which the bonds are to be issued over the tracts within the district *or subdistrict* according to the irrigable area in each of the tracts or subdivisions, so that each irrigable acre is required to bear the same burden of such costs as each other irrigable acre in the district *or subdistrict,* except as otherwise provided by law. The special tax or assessment levied to meet the principal of and interest on the bonds is a lien upon the entire tract of which *the* irrigable area forms a part or portion as of January 1 of the year in which the special tax or assessment is levied, and the number of irrigable acres in each tract so determined may not be diminished but may be increased during the term for which *the* bonds are issued or until the bonds are liquidated in full.

(2) Whenever a proceeding for the determination, in whole or in part, of the irrigable area of the lands in the district *or subdistrict* has already been had or a topographical survey or maps thereof prepared or a court confirmation of prior proceedings had, in part or in full, the board may, in its discretion, adopt all or portions of the prior proceedings and need not cause an additional survey or maps or examination of any of *the* tracts to be made or redetermine the irrigable area of any tract.

(3) The board shall make *the* determination after the hearing and shall fix the total acreage and the irrigable acreage and shall *prepare* a list of *the* irrigable area *for filing,* and the proceedings of the board in connection with *the* determination, including the hearing and notice of the hearing and order or resolution fixing the irrigable area and the preparation and filing of the list, shall conform to the requirements set forth in 85-7-2107 through 85-7-2113. At the hearing, the board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of the authorized bond issue. *The* tax levied is a lien upon the entire tract of which the irrigable area forms a part. If any landowner in the district *or subdistrict* appears before the board at that time and pays in cash the amount fixed against his land as its proportion of the amount found necessary for the purposes for which the bonds were authorized and are to be issued, his land *must* be excluded from the lien of the bond issue and the amount of bonds intended to be

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issued shall be reduced by the amount of *the* payment. Any person interested who fails to appear before the board at the meeting may not thereafter contest the proceedings of the board or any part thereof, except upon special application to the court in the proceedings for the confirmation of the bonds and a showing of reasonable excuse for failure to appear before the board."

Section 31. Section 85-7-2115, MCA, is amended to read:

"**85-7-2115. Objection by landowner.** In case any landowner makes objection to the proceedings of the board in determining the irrigable area in his own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district *or subdistrict* for the purposes of the proposed bond issue and the objection is overruled by the board, the objection without further proceedings *must* be regarded as appealed to the district court and shall, with the other proceedings of the board at the meeting, be heard at the proceedings to confirm the bonds, as provided in 85-7-2016 through 85-7-2018, and when confirmed, the order overruling *the* objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement *to each tract* shall become final, binding, and conclusive upon the landowner and upon the district, unless appealed from as provided in 85-7-2018."

Section 32. Section 85-7-2116, MCA, is amended to read:

"**85-7-2116. Restrictions on reduction of taxable acreage.** Whenever the irrigable area of the lands in any irrigation district *or subdistrict* has been determined and confirmed, no owner or holder of title or evidence of title to lands in the district *or subdistrict*, during the period when any bonds are issued and outstanding, may have the taxable acreage of his lands fixed or adjudicated in the manner provided by 85-7-1841 through 85-7-1845 in *a* manner or to *an* extent as to reduce the acreage subject to the payment of the bonds or interest or in *a* manner as to affect the security of the bonds or interest *on the bonds*."

Section 33. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 85, chapter 7, and the provisions of Title 85, chapter 7, apply to [sections 1 through 7].

Section 34. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 35. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Section 36. **Effective date.** [This act] is effective on passage and approval.

Approved April 4, 1989.

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# CHAPTER NO. 440

[HB 661]

AN ACT TO GENERALLY REVISE THE STATUTES RELATING TO SEXUALLY TRANSMITTED DISEASES; CHANGING THE REFERENCES TO "VENEREAL DISEASES" TO "SEXUALLY TRANSMITTED DISEASES"; ADDING AIDS AND CHLAMYDIA GENITAL INFECTIONS TO THE LIST OF SEXUALLY TRANSMITTED DISEASES DEFINED; CLARIFYING THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IS NOT RESPONSIBLE FOR PROVIDING TREATMENT TO THOSE WITH SEXUALLY TRANSMITTED DISEASES; ALLOWING THE DEPARTMENT TO KEEP FALSE POSITIVE SYPHILIS TEST RESULTS; ELIMINATING THE REQUIREMENT THAT A PHYSICIAN REPORT DIRECTLY TO THE DEPARTMENT; ALLOWING PERSONS AUTHORIZED BY STATE PHARMACY LAWS TO SIGN A PRESCRIPTION TO PRESCRIBE, SELL, OR RECOMMEND DRUGS FOR TREATMENT OF SEXUALLY TRANSMITTED DISEASES; CLARIFYING THE CIRCUMSTANCES UNDER WHICH INFORMATION CONCERNING SEXUALLY TRANSMITTED DISEASES MAY BE RELEASED; AMENDING SECTIONS 41-1-402, 41-1-403, 50-18-101 THROUGH 50-18-104, 50-18-106 THROUGH 50-18-113, 50-19-102, 50-19-105, AND 50-31-303, MCA; AND REPEALING SECTION 45-8-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-18-101, MCA, is amended to read:

**"50-18-101. Sexually transmitted diseases defined.** *Acquired immunodeficiency syndrome (AIDS), syphilis,* gonorrhea, chancroid, *chlamydia genital infections,* lympho-granuloma, venereum, and granuloma inguinale are *sexually transmitted* diseases. *Sexually transmitted* diseases are contagious, infectious, communicable, and dangerous to public health."

Section 2. Section 50-18-102, MCA, is amended to read:

**"50-18-102. Powers and duties of department.** The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for *sexually transmitted* diseases and may conduct education campaigns for this purpose."

Section 3. Section 50-18-103, MCA, is amended to read:

**"50-18-103. Cooperation with federal agencies — federal funds.** (1) The department of health and environmental sciences shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of *sexually transmitted* diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of *sexually transmitted* diseases, deposit funds in the state treasury, and disburse the funds."

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Section 4. Section 50-18-104, MCA, is amended to read:

**"50-18-104. Serological test for syphilis.** (1) The department of health and environmental sciences shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests.

(2) On request the department shall make laboratory tests required by this chapter."

Section 5. Section 50-18-106, MCA, is amended to read:

**"50-18-106. Duty to report cases.** If a physician or other person knows or has reason to suspect that a person who has *a sexually transmitted* disease is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case."

Section 6. Section 50-18-107, MCA, is amended to read:

**"50-18-107. Powers and duties of health officers.** (1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

(a) examine or have examined persons reasonably suspected of being infected with *a sexually transmitted* disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(d) investigate sources of infection of *a sexually transmitted* disease.

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable."

Section 7. Section 50-18-108, MCA, is amended to read:

**"50-18-108. Examination and treatment of prisoners.** Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for *a sexually transmitted* disease. If infected, the person *must* be treated by health authorities."

Section 8. Section 50-18-109, MCA, is amended to read:

**"50-18-109. Permissible release of information concerning infected persons.** (1) Information concerning persons infected or reasonably suspected to be infected with *a sexually transmitted* disease may be released *only*:

(a) *to* personnel of the department of health and environmental sciences;

(b) *to* a physician who has written consent of the person whose record is requested;

*(c) to a local health officer; or*

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*(d) by the department of health and environmental sciences or a local health officer or board under the circumstances allowed by [House Bill No. 668 (LC 864)].*

(2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in *sexually transmitted* disease eradication work, and such personnel are privileged.

(3) The purpose of this section is to protect and preserve the principle of confidentiality in *sexually transmitted* disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all *sexually transmitted* disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate."

Section 9. Section 50-18-110, MCA, is amended to read:

**"50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease.** It is unlawful to prescribe, sell, or recommend any drugs, medicines, or other substances for the cure or alleviation of *a sexually transmitted* disease except upon prescription signed by a *person* legally authorized to *do so by the pharmacy laws of* this state."

Section 10. Section 50-18-111, MCA, is amended to read:

**"50-18-111. Certificate of freedom from sexually transmitted disease not to be issued.** No person shall issue a certificate of freedom from *a sexually transmitted* disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes."

Section 11. Section 50-18-112, MCA, is amended to read:

**"50-18-112. Infected person not to expose another to sexually transmitted disease.** A person infected with a *sexually transmitted* disease *may* not knowingly expose another person to infection."

Section 12. Section 50-18-113, MCA, is amended to read:

**"50-18-113. Violation a misdemeanor.** A person who violates provisions of this chapter or rules adopted by the department of health and environmental sciences concerning *a sexually transmitted* disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor."

Section 13. Section 50-19-105, MCA, is amended to read:

**"50-19-105. Report of positive test results.** All positive laboratory tests for any *sexually transmitted* diseases *must* be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting."

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Section 14. Section 41-1-402, MCA, is amended to read:

**"41-1-402. Validity of consent of minor for health services.** (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including *a sexually transmitted* disease, or drug and substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, *a sexually transmitted* disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian shall be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity."

Section 15. Section 41-1-403, MCA, is amended to read:

**"41-1-403. Release of information by physician.** (1) A treating physician or other health professional may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor in the circumstances as enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

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(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. When the minor is found not to be pregnant or not afflicted with *a sexually transmitted* disease or not suffering from a drug- or substance-abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this part, without the consent of the minor."

Section 16. Section 50-19-102, MCA, is amended to read:

**"50-19-102. Duties of department.** (1) The department shall provide all necessary printing and pay all necessary expenses relative to administration of this part.

(2) Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(3) The department may use information derived from reports of positive tests for *sexually transmitted* diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health."

Section 17. Section 50-31-303, MCA, is amended to read:

**"50-31-303. Certain drug advertisements considered false.** (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or *a sexually transmitted* disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

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(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious."

Section 18. **Repealer.** Section 45-8-204, MCA, is repealed.

Section 19. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 20. **Coordination instruction.** If [House Bill No. 668 (LC 864)] is not passed and approved, the portions of [section 8 of this act] are void that add a new subsection (1)(d) to 50-18-109 and that strike the phrase "and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work" from subsection (2) of 50-18-109. If this phrase is not void and is reinserted, the term "venereal" is stricken and the term "sexually transmitted" is inserted.

Section 21. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 22. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 4, 1989.

# CHAPTER NO. 441

[HB 704]

AN ACT REQUIRING THAT AN ACTION CHALLENGING THE CREATION OF A COUNTY PLANNING AND ZONING DISTRICT OR OF A COUNTY ZONING DISTRICT MUST BE FILED BY OCTOBER 1, 1994, OR WITHIN 5 YEARS AFTER THE DATE OF THE ORDER CREATING THE DISTRICT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Limitations on actions challenging creation of a planning and zoning district.** An action challenging the creation of a planning and zoning district must be commenced by October 1, 1994, or within 5 years after the date of the order by the board of county commissioners creating the district, if the district was created after October 1, 1989.

Section 2. **Limitations on actions challenging creation of a zoning district.** An action challenging the creation of a zoning district must be commenced by October 1, 1994, or within 5 years after the date of the order by the board of county commissioners creating the district, if the district was created after October 1, 1989.

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Section 3. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 76, chapter 2, part 1, and the provisions of Title 76, chapter 2, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 2, part 2, and the provisions of Title 76, chapter 2, part 2, apply to [section 2].

Approved April 4, 1989.

# CHAPTER NO. 442

[HB 711]

AN ACT CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF COMMERCE RELATED TO PRODUCT TESTING, INSPECTING NONCOMMERCIAL WEIGHTS AND MEASURES, AND INSPECTING COMMERCIAL TIME MEASURING DEVICES; DELETING THE REQUIREMENT THAT THE STATE STANDARD WEIGHTS BE SUBMITTED TO THE NATIONAL BUREAU OF STANDARDS EVERY 10 YEARS FOR TESTING; CHANGING REFERENCES FROM THE NATIONAL BUREAU OF STANDARDS TO THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY; AND AMENDING SECTIONS 30-12-101 THROUGH 30-12-103, 30-12-201, 30-12-202, AND 30-12-207, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the department of commerce to implement and carry out provisions of the Montana Code Annotated relating to inspection of packages. The legislature intends that the department adopt rules or amend existing rules in a manner that will provide that packages or amounts of commodities are tested to see that they contain the amounts represented to ensure that the public may rely on representations of the amounts of commodities being sold. It is contemplated that the rules adopted provide, among other things, that the department establish procedures and schedules for random inspection of packages and amounts of commodities throughout the state and that the rules provide for the random selection of test sites throughout the state.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 30-12-101, MCA, is amended to read:

**"30-12-101. Definitions.** Unless the context requires otherwise, in parts 1 through 5 of this chapter the following definitions apply:

(1) "Barrel", when used in connection with fermented liquor, means a unit of 31 gallons.

*(2) "Commerce", "trade", or "commercial" means a monetary or value exchange between parties for merchandise or services.*

*(3)* "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of parts 1 through 5. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

*(4)* "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

*(5)* "Cord", when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is ranked and well stowed.

*(6)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

*(7)* "Intrastate commerce" means any commerce or trade that is begun, carried on, and completed wholly in this state, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made in this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

*(8)* "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

*(9)* "Person" includes individuals, partnerships, corporations, companies, societies, and associations.

*(10)* "Sell" and "sale" include but are not limited to barter and exchange.

*(11)* "Ton" means a unit of 2,000 pounds avoirdupois weight.

*(12)* "Weight", when used in connection with any commodity, means net weight.

*(13)* "Weight", "measure", and "weights and measures" mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with those instruments and devices. The terms do not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. None of the provisions of parts 1 through 5 apply to electricity, gas, or water meters operated in a public utility system or to any appliances or accessories associated with them. *The terms do not include time measuring devices by which products or services are sold.*"

Section 2. Section 30-12-102, MCA, is amended to read:

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**"30-12-102. Systems of weights and measures.** The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems *may* be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national *institute* of standards *and technology* are recognized and shall govern weighing and measuring equipment and transactions in the state."

Section 3. Section 30-12-103, MCA, is amended to read:

**"30-12-103. State standards of weight and measure.** Those weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by this state for use as state standards *are*, when they have been certified as being satisfactory for use as such by the national *institute* of standards *and technology*, the state standards of weight and measure. The state standards *must* be kept in a safe and suitable place in the office or laboratory of the department. They *may* not be removed from there except for repairs or for certification."

Section 4. Section 30-12-201, MCA, is amended to read:

**"30-12-201. General powers and duties of department.** The department *has* the custody of the state standards of weight and measure and of the other standards and equipment provided for by parts 1 through 5 and shall keep accurate records of them. The department shall enforce the provisions of parts 1 through 5. It shall supervise the weights and measures *used in commerce or trade that are* offered for sale, sold, or in use in this state."

Section 5. Section 30-12-202, MCA, is amended to read:

**"30-12-202. Specific powers and duties of department — rules.** (1) The department shall adopt from time to time reasonable rules for the enforcement of parts 1 through 5, which rules have the effect of law. These rules may include:

(a) schedules of fees for testing and certification;

(b) standards of net weight, measure, or count and reasonable standards of fill for any commodity in package form;

(c) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by the department in the discharge of its official duties;

(d) exemptions from the sealing or marking requirements of 30-12-209 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus involved; and

(e) rules governing the voluntary registration of servicemen and service agencies.

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(2) These rules shall include specifications, tolerances, and other technical requirements for weights and measures subject to inspection and testing under 30-12-205, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

(a) that are not accurate;

(b) that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or

(c) that facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national *institute* of standards *and technology* and published in national *institute* of standards *and technology* Handbook 44 and supplements thereto, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of this state, except insofar as specifically modified, amended, or rejected by a rule issued by the department.

(4) An apparatus *is* considered to be "correct" when it conforms to all applicable requirements adopted as specified in this section. Other apparatus *are* considered to be "incorrect"."

Section 6. Section 30-12-207, MCA, is amended to read:

**"30-12-207. Inspection of packages.** (1) The department shall *adopt by rule and implement a schedule to* weigh or measure and inspect packages or amounts of commodities kept, offered, exposed for sale, sold, or in the process of delivery to determine whether they contain the amounts represented and whether they *are* kept, offered, exposed for sale, or sold in accordance with law. *The schedule adopted must provide for random inspection of packages and commodities at randomly selected inspection sites.* When those packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale in violation of law, the department may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of that lot.

(2) A person may not:

(a) sell or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless the package or amount of commodity has been brought into full compliance with all legal requirements; or

(b) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the department."

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Section 7. **Noncommercial inspections — fees.** Subject to the availability of resources and upon payment of a fee commensurate with the costs of inspection, the department may inspect noncommercial weighing and measuring devices. Fees collected under this section must be deposited in the state general fund.

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 30, chapter 12, part 2, and the provisions of Title 30, chapter 12, part 2, apply to [section 7].

Approved April 4, 1989.

# CHAPTER NO. 443

[HB 274]

AN ACT AUTHORIZING THE DEPARTMENT OF STATE LANDS TO INVESTIGATE COMPLAINTS AND ORDER CHANGES OR OTHER APPROPRIATE MITIGATION CONCERNING THE USE OF EXPLOSIVES ASSOCIATED WITH HARD-ROCK MINING ACTIVITIES.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of state lands concerning the rulemaking authority that is provided in the bill. The department is authorized to adopt rules concerning the types and methods of investigations it may conduct to appropriately respond to complaints about the use of explosives associated with hard-rock mining and exploration activities. The rules may also specify the manner in which persons using explosives shall participate and cooperate in the department's investigation of a complaint and in carrying out any changes ordered by the department as a result of the investigation.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Action in response to complaints related to use of explosives.** (1) An owner of an interest in real property or an individual who resides within an area subject to property damage or safety hazards related to the use of explosives by any person subject to the provisions of this part may file a complaint with the department, describing the alleged property damage or safety hazards. The complainant shall provide credible evidence to the department to substantiate allegations of property damage or safety hazards.

(2) Upon receipt of a complaint, the department:

(a) shall investigate the statements and charges in the complaint, using all available information, including mine or exploration blasting records and

other data obtained through an examination of the dwelling, structure, or site identified in the complaint;

(b) may conduct tests and make measurements, including reasonable efforts to replicate conditions that may have caused property damage or safety hazards, and may require the allegedly responsible person to cooperate as necessary to investigate the complaint;

(c) shall issue a written finding specifying the cause of any property damage or safety hazards that are validated by the investigation; and

(d) shall, if it determines that the preponderance of evidence indicates that property damage or safety hazards are or were caused by exploration or mining activities, order the responsible person to make changes in the use of explosives or other appropriate mitigation to alleviate property damage or safety hazards.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 1].

Approved April 5, 1989.

# CHAPTER NO. 444

[HB 395]

AN ACT GRANTING PRESCRIPTIVE AUTHORITY TO NURSE SPECIALISTS; REQUIRING THE BOARD OF NURSING AND BOARD OF MEDICAL EXAMINERS, ACTING JOINTLY, TO ESTABLISH RULES REGULATING PRESCRIPTION OF DRUGS BY NURSE SPECIALISTS; AMENDING SECTIONS 37-2-101, 37-7-401, AND 37-8-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants authority to the board of nursing to adopt rules regarding prescriptive authority for certain nurse specialists. At a minimum, it is intended that the rules address:

(1) criteria for granting prescriptive authority to an applicant for recognition as a nurse specialist who requests prescriptive authority as a condition of practice;

(2) a procedure for granting prescriptive authority to nurse specialists already recognized by the board on July 1, 1989, upon request of the nurse specialist;

(3) a process to notify the board of pharmacy when prescriptive authority is granted to a nurse specialist;

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(4) continuing education requirements for nurse specialists who are granted prescriptive authority, with respect to the use of medical therapeutics in the area of practice; and

(5) appropriateness of the authority to prescribe specific drugs based on the nurse's area of specialty.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-2-101, MCA, is amended to read:

**"37-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, chiropody (podiatry), optometry, *or a nursing specialty as described in 37-8-202(5)* and in *the licensed* practice to administer or prescribe drugs.

(2) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to *the* pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (2), but *the* term does not include any device or any components of a device.

(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(4) "Pharmacy" means an establishment which engages in the sale of drugs requiring a prescription.

(5) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which *the* medical practitioner maintains an office for professional practice.

(6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but *the* term does not include a pharmacy.

(7) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(8) "State" means the state of Montana or any political subdivision thereof."

Section 2. Section 37-7-401, MCA, is amended to read:

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**"37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions.** (1) It *is* unlawful for any physician *or nurse specialist* to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of *the patient.*

(2) A prescription must be written *so* that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 3 years from the date it was originally filled. *A* narcotic prescription may *not* be refilled."

Section 3. Section 37-8-202, MCA, is amended to read:

**"37-8-202. Organization — meetings — powers and duties.** (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges which may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for *prosecutions.*

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. *The* board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to assure interstate endorsement of licenses.

(5) *(a)* The board may define the educational requirements and other qualifications applicable to specialty areas of nursing. Specialty areas of nursing are those that require additional professional education beyond the basic nursing degree required of a registered nurse. *Additional* education *must be* obtained in courses offered in a university setting or its equivalent.

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The applicant must be certified by a specialty area certifying body. Specialty areas of nursing include nurse practitioners, nurse-midwives, and nurse-anesthetists.

*(b) The board of nursing and the board of medical examiners, acting jointly, shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the boards for authorization, prescriptive authority must be granted.*"

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved April 5, 1989.

## CHAPTER NO. 445

[HB 571]

AN ACT REVISING THE ELIGIBILITY REQUIREMENTS FOR PRISONER PARTICIPATION IN THE SUPERVISED RELEASE PROGRAM; AMENDING SECTION 46-23-411, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-23-411, MCA, is amended to read:

"**46-23-411. Application to participate — eligibility.** (1) Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the supervised release program if he has served at least one-half of the time required to be considered for parole and not more than *24* months remain before he is eligible for parole.

(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Applicability.** [This act] applies to persons incarcerated at the time of or after the effective date of [this act].

Approved April 5, 1989.

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# CHAPTER NO. 446

[HB 572]

AN ACT REQUIRING EMPLOYEES OF THE DEPARTMENT OF HIGHWAYS AUTHORIZED TO INSPECT AND WEIGH MOTOR VEHICLES TO COLLECT BILLS OF LADING FROM CARRIERS OF AGRICULTURAL SEED; REQUIRING THE OFFICERS TO FORWARD THE BILLS OF LADING TO THE DEPARTMENT OF AGRICULTURE; REQUIRING A SEED DEALER TO PROVIDE CERTAIN INFORMATION ON A BILL OF LADING; AMENDING SECTIONS 61-10-141 AND 80-5-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the growth and spread of noxious weeds in the State of Montana has become one of the single greatest natural threats to the state's agricultural industry and economy; and

WHEREAS, this threat frequently materializes when seeds shipped into this state contain unlawful noxious weed seeds which become planted with agricultural seed crops before the Department of Agriculture has the knowledge and opportunity to embargo the shipment; and

WHEREAS, the Legislature of the State of Montana finds it appropriate to use existing Department of Highways personnel and the facilities in the Gross Vehicle Weight Division to obtain bills of lading on all seed shipments into the state and forward the bills of lading to the Montana Department of Agriculture in order to enhance its enforcement capabilities.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-10-141, MCA, is amended to read:

**"61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds.** (1) A peace officer, officer of the highway patrol, or employee of the department of highways may weigh any vehicle regulated by 61-10-101 through 61-10-110, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110.

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right-of-way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department of highways may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may

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require vehicles, except passenger cars and pickup trucks under 8,000 pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) The department of highways shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of *the* joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of highways shall cooperate to assure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of highways shall designate employees as peace officers. The designated employees must be employed in the administration of the gross vehicle weight functions of the department of highways. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles utilized by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of such vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of highways has:

*(a)* the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203*; and*

*(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained.*"

Section 2. Section 80-5-202, MCA, is amended to read:

"**80-5-202. Licensing — application — fee.** (1) All seed conditioning plants shall obtain a license from the department for each plant before doing business in this state; however, a seed grower, when conditioning seed from his own production, is not required to be licensed under this part.

(2) Each conditioning plant must post in a conspicuous location in the facility:

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(a) its fees for conditioning services; and

(b) the license designation for the facility.

(3) All seed labelers and growers who label or affix written claims to their seed shall obtain a license from the department before doing business in Montana. The following persons, however, are excluded from the licensing requirements under this subsection:

(a) a Montana certified seed grower when labeling certified seed from his own production; and

(b) any person who updates germination test data by affixing to the package of seed a supplemental label bearing new germination data, the lot number, and his name and address.

(4) *A* person may *not* sell or distribute seed in Montana without obtaining a seed dealer's license from the department for each place where seed is located, except for:

(a) a person who distributes seed only in sealed packages of 10 pounds or less that are properly labeled;

(b) a Montana certified seed grower when selling certified seed from his own production; and

(c) a grain producer when making bin-run seed sales.

(5) Each person selling seed from a location other than the licensed place must be listed on the application for license.

(6) The department shall set by rule the period for which a license is issued under this section.

(7) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed.

(8) Each license shall cost no more than $50 a year. The fee must include the cost of application for a license and must be nonrefundable. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.

(9) An application for a license under this section must be made in a manner and on forms provided by the department. *The* application must contain among other things:

(a) the location of each seed conditioning plant if the application is for a seed conditioning plant license;

(b) a sample label if the application is for a seed labeler license; and

(c) a list of persons selling seed if the application is for a seed dealer's license.

*(10) Seed dealers shall provide with all shipments of seed a bill of lading or other evidence of delivery that includes:*

*(a) the names of:*

*(i) the seller;*

*(ii) the shipper, if other than the seller;*

*(iii) the buyer; and*

*(iv) the receiver, if other than the buyer; and*

*(b) the destination where the seed will be first unloaded."*

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Section 5. **Termination.** [This act] terminates July 1, 1991.

Approved April 5, 1989.

# CHAPTER NO. 447

[HB 592]

AN ACT RELATING TO CIVIL RECOVERY FOLLOWING A FIRE CAUSED BY ARSON; REGULATING THE FINANCIAL EFFECTS AND COSTS OF ARSON; PROVIDING FOR THE PAYMENT OF COSTS TO SUPPRESS AND INVESTIGATE A FIRE; PROVIDING FOR A TAX LIEN AGAINST FIRE INSURANCE PROCEEDS; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Recovery of suppression and investigation expenses for fires caused by arson.** (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement and firefighting agencies for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

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(5) This section does not limit the right of a law enforcement or fire-fighting agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action.

Section 2. **Tax lien on insured property destroyed by fire.** If taxes are due and unpaid on property covered by fire insurance and damaged or destroyed by fire, the government entity owed the taxes has a lien on fire insurance proceeds paid in relation to that property in the amount of the unpaid taxes.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [section 2].

Section 5. **Applicability.** [Section 2] applies to insurance contracts entered into on or after October 1, 1989.

Approved April 5, 1989.

# CHAPTER NO. 448

[HB 606]

AN ACT TO ALLOW A PARENT, GUARDIAN, AND CERTAIN OTHER ADULTS TO LEGALLY PROVIDE NONINTOXICATING AMOUNTS OF ALCOHOL TO A PERSON UNDER 21 YEARS OF AGE; TO MAKE THE PROVIDER OF AN INTOXICATING QUANTITY OF ALCOHOL TO A PERSON UNDER 21 YEARS OF AGE SUBJECT TO CIVIL LIABILITY FOR TORTIOUS ACTS COMMITTED BY THE PERSON WHILE INTOXICATED; AND AMENDING SECTIONS 16-6-305, 27-1-710, 45-5-622 THROUGH 45-5-624, AND 61-8-407, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 16-6-305, MCA, is amended to read:

**"16-6-305. Age limit for sale or provision of alcoholic beverages — liability of provider.** (1) *(a)* Except in the case of an alcoholic beverage *provided in a nonintoxicating quantity* to a person under 21 years of age by his parent or guardian, physician or dentist for medicinal purposes, a *licensed pharmacist* upon the prescription of a physician, *or an ordained minister or priest in connection with a religious observance,* a person *may*

*not* sell or otherwise *provide* an alcoholic beverage to *a* person under 21 years of age.

*(b) A parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age.*

*(c) For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic beverage that is sufficient to produce:*

*(i) a blood, breath, or urine alcohol concentration in excess of 0.05; or*

*(ii) substantial or visible mental or physical impairment.*

(2) Any person *is* guilty of a misdemeanor who:

(a) invites a person under the age of 21 years into a public place where an alcoholic beverage is sold and treats, gives, or purchases an alcoholic beverage for *the* person;

(b) permits *the* person in a public place where an alcoholic beverage is sold to treat, give, or purchase alcoholic beverages for him; or

(c) holds out *the* person to be 21 years of age or older to the owner of the establishment or his or her employee or employees.

(3) It is unlawful for any person to fraudulently misrepresent his or her age to any dispenser of alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in any identification card.

*(4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the result of the intoxicated condition created by the violation."*

Section 2. Section 27-1-710, MCA, is amended to read:

**"27-1-710. Civil liability for injuries involving alcohol consumption.** (1) The purpose of this section is to set statutory criteria governing the liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) *Except as provided in 16-6-305, a* person or entity furnishing an alcoholic beverage may not be found liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a provision or a violation of a provision of Title 16.

(3) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;

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(b) the consumer was visibly intoxicated; or

(c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol."

Section 3. Section 45-5-622, MCA, is amended to read:

**"45-5-622. Endangering the welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) *Except as provided in 16-6-305, a* parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of *an* intoxicating *substance* by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian; or

(ii) engage in sexual conduct.

(3) A person convicted of endangering the welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed $1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Section 4. Section 45-5-623, MCA, is amended to read:

**"45-5-623. Unlawful transactions with children.** (1) *Except as provided for in 16-6-305, a* person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

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(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives *an* alcoholic *beverage* to a person under 21 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 5. Section 45-5-624, MCA, is amended to read:

**"45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.** (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, *except as provided in 16-6-305 and* except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed $50;

(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. In such case, the youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to

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comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both."

Section 6. Section 61-8-407, MCA, is amended to read:

**"61-8-407. Definition of alcohol concentration.** For purposes of *16-6-305,* 61-8-401, and 61-8-406, "alcohol concentration" means either grams of alcohol per 100 milliliters of blood, grams of alcohol per 210 liters of breath, or grams of alcohol per 75.3 milliliters of urine."

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 5, 1989.

# CHAPTER NO. 449

[HB 656]

AN ACT AMENDING THE LAWS GOVERNING THE FINANCING OF SPECIAL IMPROVEMENT DISTRICTS; AUTHORIZING A CITY OR TOWN COUNCIL TO WITHDRAW ACCELERATED ASSESSMENT DELINQUENCIES OF A SPECIAL IMPROVEMENT DISTRICT AND TO WAIVE PENALTIES AND INTEREST ON THE PAYMENT OF DELINQUENT ASSESSMENTS OF SPECIAL IMPROVEMENT DISTRICTS; CHANGING THE ANNUAL SERIAL BOND INSTALLMENT MATURITY FORMULA; SPECIFYING THAT REFUNDING BONDS MAY MATURE 30 YEARS AFTER THE UNDERLYING BONDS WERE ISSUED; AUTHORIZING THE ISSUANCE OF REFUNDING BONDS UPON A 50 PERCENT ANNUAL DEFAULT IN DISTRICT ASSESSMENT PAYMENTS; REPEALING SECTIONS THAT SET FORTH THE FORM OF A BOND OR WARRANT; AMENDING SECTIONS 7-12-2171, 7-12-2172, 7-12-2191, 7-12-2193, 7-12-4102, 7-12-4182, 7-12-4183, 7-12-4192, 7-12-4194, 7-12-4203, 7-12-4244, 7-12-4247, 7-13-114, 15-16-102, AND 15-16-103, MCA; REPEALING SECTIONS 7-12-2170 AND 7-12-4202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-12-2171, MCA, is amended to read:

**"7-12-2171. Details relating to rural improvement district bonds and warrants — definitions of bond forms.** (1) The bonds and warrants shall be drawn against *either* the *construction or maintenance* fund created for the *special improvement* district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually or semiannually, at the discretion of the

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board of county commissioners, on *the* dates the board prescribes. *The* warrants or bonds shall bear the signatures of the chairman of the board and the county clerk and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and if interest coupons *are* attached *to the warrants or bonas*, they shall also be registered and shall bear the signatures of the chairman of the board and the county clerk. *The* coupons may bear the facsimile signatures of *the* officers in the discretion of the board.

(2) *The* bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period of not to exceed 30 years; except that if federal loans are available for improvements, repayment may extend over a period not to exceed 40 years.

(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the board, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest.

(4) As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds on which:

(i) a part of the principal must be paid each time interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if *the* increase represents interest accrued over an additional period not greater than 6 months.

(b) "Serial bonds" means the form of bonds that are payable in annual installments and on which the amount maturing each year may not be more than *five* times the principal amount of bonds maturing in any previous year."

Section 2. Section 7-12-2172, MCA, is amended to read:

**"7-12-2172. Procedure to issue bonds and warrants.** (1) The board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 *and 7-12-2171 through* 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the improvements which is to be assessed against the benefited property within the district, to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount less than the face

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value *of the bonds or warrants* if it determines that *the* sale is in the best interests of the district and the county.

(2) The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana, or an agency, instrumentality, corporation, or department thereof.

(3) In all other cases, the provisions of 7-7-4251 through 7-7-4254 which relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as *they* are applicable and not in conflict with the provisions of this section and 7-12-2173, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants."

Section 3. Section 7-12-2191, MCA, is amended to read:

**"7-12-2191. Chang[illegible] in outstanding principal of district — relevy of assessments.** [illegible] ceeds of the bonds or warrants of the special improvement district, including investment income, are applied to the redemption and prepayment of *the* bonds or warrants, as provided in 7-12-2173 and 7-12-2174, or if refunding bonds are issued pursuant to 7-12-2193 and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and then outstanding must be reduced or increased, respectively, pro rata by the principal amount of *the* prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. *If refunding bonds are issued, the assessments may be relevied over a term ending not later than either the final maturity date of the refunding bonds or the date 30 years after the date the bonds to be refunded were issued.* The board shall reassess and relevy *the* assessments, with the same effect as an original levy, in reduced or increased amounts, in accordance with the provisions of 7-12-2158 through 7-12-2160."

Section 4. Section 7-12-2193, MCA, is amended to read:

**"7-12-2193. Refunding bonds.** (1) A county may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for *that* purpose, the board of county commissioners, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the board may not authorize the issuance of *the* bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-2105(2), and found by resolution that *the* issuance of refunding bonds is in the best interest of the special improvement district.

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(3) After the adoption of the required resolution or resolutions, the board may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) *Bonds* may not be refunded by the issuance of refunding bonds unless:

*(a)* the rate of interest offered on the refunding bonds is at least ½ of 1% a year less than the rate of interest on the bonds to be refunded;

*(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or*

*(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.*

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which *the* bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received *from their* sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) *Deposited funds* must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. *The* securities must mature or be callable at the option of the holder on *the* dates and bear interest at *the* rates and be payable on *the* dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon *the* redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the board to the escrow account.

(e) The county may pay the reasonable costs and expenses of issuing the refunding bonds and of establishing and maintaining the escrow account.

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(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

(a) *the proceeds of the refunding bonds do not redeem the outstanding bonds until* one-third or more of the term for which *the* bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which *the* bonds are payable; *or*

*(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.*"

Section 5. Section 7-12-4102, MCA, is amended to read:

**"7-12-4102. Authorization for creation of special improvement districts.** (1) The city or town council has power to create special improvement districts, designating *them* by number; to extend the time for payment of assessments levied upon *the* districts for *district* improvements for a period not exceeding 20 years *or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years*; to make *the* assessments payable in installments; and to pay all expenses of whatever character incurred in making *the* improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience *requires*, the city council *may*:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of *the* city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

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(d) create special improvement districts and order the acquisition, construction, or reconstruction *within the districts* of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees *on the streets, avenues, and alleys*;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by *the* city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes, hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in *the* city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend *those* public utility services;

(g) create special improvement districts and order any work to be done *that is considered* necessary to improve the whole or any portion of *the* streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of *the* city; and

(h) maintain, preserve, and care for any and all of the improvements *authorized in this section.*

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city where the special improvement district abuts and benefits

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that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Section 6. Section 7-12-4182, MCA, is amended to read:

**"7-12-4182. Collection of district assessments by city treasurer in cities collecting their own taxes — delinquencies.** (1) In every city or town which shall provide by ordinance for the collection of its taxes for general, municipal, and administrative purposes by its city treasurer or town clerk, *the* city treasurer or town clerk shall collect all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected by him. All of the provisions of 7-6-4423 apply to the collection of *the* special taxes and assessments in the same manner as *the* provisions apply to the collection of other city or town taxes.

(2) *(a)* When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments may, at the option of the city or town council and upon adoption of the appropriate resolutions, become delinquent. *The city or town may, pursuant to 7-12-4184, order that all assessments that are delinquent for specific parcels of land as a result of acceleration be withdrawn.*

*(b)* Upon delinquency in one or all installments, the whole property shall be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent."

Section 7. Section 7-12-4183, MCA, is amended to read:

**"7-12-4183. Collection of district assessments by city treasurer in cities where county collects taxes.** (1) In any city or town where taxes for general, municipal, and administrative purposes are certified to and collected by the county treasurer in accordance with the provisions of 7-6-4407 and 7-6-4423, the city or town may, nevertheless, provide by ordinance for the collection by its city treasurer or town clerk of all special assessments and taxes levied and assessed in accordance with any of the provisions of this part and part 42 in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected by the county treasurer. All of the provisions of 7-6-4423 apply to the collection of *the* special taxes and assessments in the same manner as *the* provisions apply to the collection of other city or town taxes.

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(2) *(a)* When the payment of any one installment of any special assessment becomes delinquent, all payments of subsequent installments shall, at the option of the city or town council and by appropriate resolution duly adopted, become delinquent. *The city or town council may order that all assessments that are delinquent as a result of acceleration be withdrawn.*

*(b) Delinquent* special assessments shall be certified to the county clerk of the county in which *the* city or town is situated. *The* county treasurer must collect *the* delinquent special assessments and taxes in the same manner and at the same time as taxes for general, municipal, and administrative purposes are collected by him. In case *they* are not paid, the whole property shall be sold *in* the same *manner* as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent."

Section 8. Section 7-12-4192, MCA, is amended to read:

**"7-12-4192. Change in outstanding principal of district — relevy of assessments.** If proceeds of the bonds or warrants of the special improvement district, including investment income, are applied to the redemption and prepayment of *the* bonds or warrants, as provided in 7-12-4205 and 7-12-4206, or if refunding bonds are issued pursuant to 7-12-4194 and the principal amount of the outstanding bonds of the district is decreased or increased, the assessments levied in the district and then outstanding must be reduced or increased, respectively, pro rata by the principal amount of *the* prepayment or the increment above or below the outstanding principal amount of bonds represented by the refunding bonds. *If refunding bonds are issued, the assessments may be relevied over a term ending not later than either the final maturity date of the refunding bonds or the date 30 years after the date the bonds to be refunded were issued.* The city council shall reassess and relevy *the* assessments, with the same effect as an original levy, in reduced or increased amounts in accordance with the provisions of 7-12-4176 through 7-12-4178."

Section 9. Section 7-12-4194, MCA, is amended to read:

**"7-12-4194. Refunding bonds.** (1) A city may issue special improvement district bonds for the purpose of providing the money needed to pay principal of and interest on outstanding special improvement district bonds. To issue bonds for *that* purpose, the city council, at a regular meeting or a duly called special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be refunded;

(b) the reasons for issuing refunding bonds; and

(c) the term and details of the refunding bonds.

(2) If the refunding bonds are proposed to be issued in an amount greater than the amount of outstanding bonds to be refunded, the city council may not authorize the issuance of *the* bonds until it has conducted a public hearing on the desirability of issuing the bonds, after published and mailed notice as provided in 7-12-4106(2), and found by resolution that *the* issuance of refunding bonds is in the best interest of the special improvement district.

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(3) After the adoption of the required resolution or resolutions, the council may:

(a) sell the refunding bonds at a private negotiated sale; or

(b) at its option, give notice of the sale and sell the refunding bonds in the same manner that other special improvement district bonds are sold.

(4) *Bonds* may not be refunded by the issuance of refunding bonds unless:

*(a)* the rate of interest offered on the refunding bonds is at least ½ of 1% a year less than the rate of interest on the bonds to be refunded;

*(b) there is, or will be on the next payment date, default in the payment of bond principal or interest; or*

*(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.*

(5) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which *the* bonds mature or are subject to redemption, but the proceeds of the refunding bonds, less any accrued interest or premium received *from their* sale, must be deposited with other funds appropriated for the payment of the outstanding bonds in escrow with a suitable banking institution or trust company, which may be located either in or out of the state.

(b) *Deposited funds* must be invested in securities that are general obligations of the United States or securities the principal of and interest on which are guaranteed by the United States. *The* securities must mature or be callable at the option of the holder on *the* dates and bear interest at *the* rates and be payable on *the* dates as may be required to provide funds sufficient, with any cash deposited in the escrow account, to pay when due:

(i) the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption;

(ii) the principal on each refunded bond at maturity or upon *the* redemption date; and

(iii) any redemption premium.

(c) The escrow account must be irrevocably appropriated to the payment of the principal of an interest and redemption premium, if any, on the refunded bonds.

(d) Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal or interest due prior to issuance of the refunding bonds may be appropriated by the council to the escrow account.

(e) The city may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account.

(6) Refunding bonds may be issued under this section to pay principal of or interest on special improvement district bonds outstanding on April 30, 1985, only if:

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(a) the proceeds of *the* refunding bonds do not redeem *the* outstanding bonds until one-third or more of the term for which *the* bonds were issued has expired;

(b) there is a deficiency in the bond account or interest account of the special improvement district fund from which *the* bonds are payable *that will not be satisfied by a loan from the revolving fund; or*

*(c) 50% or more of the installments of special assessments levied in the special improvement district and payable in a single fiscal year have been delinquent for at least 1 year.*"

Section 10. Section 7-12-4203, MCA, is amended to read:

"**7-12-4203. Details relating to special improvement district bonds and warrants — definitions of bond forms.** (1) The bonds and warrants shall be drawn against the special improvement district fund created for the district and shall bear interest from the date of registration until called for redemption or paid in full. The interest shall be payable annually or semiannually, at the discretion of the governing body of the municipality, on *the* dates the governing body prescribes. *The* warrants or bonds shall bear the signatures of the mayor and clerk and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons *are* attached *to the warrants or bonds*, they shall also be registered and shall bear the signatures of the mayor and clerk.

(2) *The* bonds shall be in denominations of $100 or fractions or multiples thereof, may be issued in installments, and may extend over a period not to exceed 20 years *or, if refunding bonds are issued pursuant to 7-12-4194, over a period ending not later than 30 years after the date the bonds to be refunded were issued.*

(3) All special improvement district bonds must be amortization bonds unless, in the judgment of the city council, serial bonds will be more advantageous to the district and can be sold at a comparatively reasonable rate or rates of interest.

(4) As used in part 41 and this part, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Amortization bonds" means the form of bonds on which:

(i) a part of the principal must be paid each time interest becomes payable;

(ii) the part payment of principal increases at each installment in the same amount that the interest decreases;

(iii) the combined interest and principal due on each due date remains the same until the bonds are paid;

(iv) the final payment may vary from prior payments in the amount resulting from disregarding fractional costs in prior payments; and

(v) the initial payment may be larger than subsequent payments if *the* increase represents interest accrued over an additional period not greater than 6 months.

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(b) "Serial bonds" means the form of bonds that are payable in annual installments and on which the amount maturing each year may not be more than *five* times the principal amount of bonds maturing in any previous year."

Section 11. Section 7-12-4244, MCA, is amended to read:

**"7-12-4244. Issuance of bonds based upon supplemental revolving fund — election.** (1) At any time after the award of the contract for any of the improvements described in 7-12-4241 and prior to the issuance of bonds or warrants under the provisions of 7-12-4201 *and* 7-12-4203, the council may by resolution determine that *the* improvement is of a character that bonds may be issued under 7-12-4241 through 7-12-4258 in lieu of bonds under 7-12-4201 *and* 7-12-4203, and may submit to the qualified electors of the city or town the question whether *the* bonds shall be issued.

(2) The proposal to issue bonds may be submitted at the same election as the proposal to create the supplemental revolving fund and must be approved by a majority of the qualified electors voting on the question."

Section 12. Section 7-12-4247, MCA, is amended to read:

**"7-12-4247. Details relating to bonds.** (1) The bonds may mature at one time, not exceeding the maximum maturity of the assessments to be levied for *the* improvement, or may mature in installments at various times during the term of *the* assessments, but *the* bonds *may not* mature *later than* 10 years from *the* date *of issuance.*

(2) *The* bonds, as the council shall determine, *are* subject to redemption prior to maturity and may be payable at any suitable bank or trust company either within or without the state of Montana.

(3) The bonds issued under 7-12-4241 through 7-12-4258 shall be in substantially the form provided in 7-12-4201 *and* 7-12-4203, as modified by the provisions of 7-12-4241 through 7-12-4258."

Section 13. Section 7-13-114, MCA, is amended to read:

**"7-13-114. Applicable provisions of laws relating to rural improvement districts.** The provisions of 7-12-2101, 7-12-2106, 7-12-2107, 7-12-2110, 7-12-2115 through 7-12-2120, 7-12-2131 through 7-12-2140, 7-12-2153, 7-12-2154, 7-12-2161 through 7-12-2165, 7-12-2166(2), 7-12-2168(2), and 7-12-2169 *and 7-12-2171 through* 7-12-2174 pertaining to rural improvement districts shall likewise apply under the provisions of this part unless in conflict with the provisions of this part."

Section 14. Section 15-16-102, MCA, is amended to read:

**"15-16-102. Time for payment — penalty for delinquency.** All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of *the* taxes *are* payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half on or before 5 p.m. on May 31 of each year.

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(2) Unless one-half of *the* taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, then *the* amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after *the* delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after *the* delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) If the taxes become delinquent, the county treasurer may accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest.

*(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.*"

Section 15. Section 15-16-103, MCA, is amended to read:

"**15-16-103. Special improvement districts with annual interest payments — collection of special assessments for all special improvements.** (1) Special assessments or installments of special assessments made for special improvements in towns and cities, the bonds for which annual interest payments have been specified and that were issued after July 1, 1981, and that have been duly and regularly made and levied by resolution according to law, shall be payable as follows:

(a) One-half of *the* taxes *are* payable on or before 5 p.m. on November 30 of each year. *If* the *taxes* are not paid on or before *that* date, *they are* subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102. *The penalty and interest may be waived by resolution of the city council, as provided in 15-16-102(6).*

(b) One-half of *the* taxes *are* payable on or before 5 p.m. on May 31 of each year. *If* the *taxes* are not paid on or before *that* date, *they are* subject to the same interest and penalty for nonpayment as delinquent property taxes under 15-16-102. *The penalty and interest may be waived by resolution of the city council, as provided in 15-16-102(6).*

(2) The collection of special assessments or installments of special assessments made for special improvements in towns and cities *are* as provided by 7-12-4181."

Section 16. **Repealer.** Sections 7-12-2170 and 7-12-4202, MCA, are repealed.

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Section 17. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 18. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. **Effective date.** [This act] is effective on passage and approval.

Approved April 5, 1989.

# CHAPTER NO. 450

[HB 667]

AN ACT TO ALLOW A BUSINESS IMPROVEMENT DISTRICT TO ASSESS COSTS BASED UPON THE OCCUPIED OR INCOME-PRODUCING AREA ABOVE THE FIRST FLOOR OF A BUILDING; AND AMENDING SECTION 7-12-1133, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-12-1133, MCA, is amended to read:

**"7-12-1133. Assessment of costs — area, lot, taxable valuation, and square footage options.** (1) At the same time the board submits the annual budget and work plan to the governing body as provided in 7-12-1132, the board shall also recommend to the governing body a method of levying an assessment on the property within the district which will best ensure that the assessment on each lot or parcel is equitable in proportion to the benefits to be received.

(2) The governing body shall annually assess the entire cost of the district against the entire district using a method which best ensures that the assessment on each lot or parcel is equitable in proportion to the benefits to be received. In determining the method of assessment to be used, the governing body shall consider the recommendations of the board. The governing board shall levy the assessment using one of the following methods:

(a) each lot or parcel of land within such district may be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys, and public places;

(b) if the governing body determines that the benefits derived by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the district without regard to the area of the lot or parcel;

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(c) each lot or parcel of land, including the improvements thereon, may be assessed for that part of the whole cost of the district which its taxable valuation bears to the total taxable valuation of the property of the district;

*(d) each building may be assessed for that part of the whole cost of the district that the occupied or income-producing area of the building above the first floor bears to the area of the entire district; or*

*(e)* by using any combination of the assessment options provided in subsections *(2)(a)* through *(2)(d)*."

Approved April 5, 1989.

## CHAPTER NO. 451

[HB 723]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE PROVISION OF GENERAL RELIEF ASSISTANCE; AMENDING SECTIONS 53-2-822, 53-3-108, 53-3-109, 53-3-113, 53-3-205, 53-3-206, 53-3-209, 53-3-304, 53-3-309, AND 53-3-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-2-822, MCA, is amended to read:

"**53-2-822. Workfare program required.** The department of social and rehabilitation services shall establish a *workfare* program as provided in 53-3-304. The department of social and rehabilitation services may contract with the county, a municipality, or state agency *to operate workfare projects* for recipients of general relief."

Section 2. Section 53-3-108, MCA, is amended to read:

"**53-3-108. Purpose.** (1) The legislature, in order to implement the provisions of Article XII, section 3, of the Montana constitution, finds that certain persons are in need of assistance because of misfortune and must be provided with certain assistance through programs for general relief. These programs are to be efficiently administered by local county welfare boards or, whenever responsibility for local welfare programs has been assumed by the state of Montana, by the department of social and rehabilitation services. General relief, along with other assistance programs, is made available to provide basic necessities that provide minimum subsistence compatible with decency and health and to provide financial assistance for medical services necessary for serious medical conditions. General relief medical assistance is not intended to provide catastrophic medical insurance to nonindigent persons.

(2) The legislature finds that assistance under the general relief program should not be available to those persons who have either adequate income or resources of their own. When benefits and services are available

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through other federal or state assistance programs, general relief should not be provided in duplication of such other assistance.

*(3)* The legislature further finds that the purposes of the general relief program must be implemented only to the extent necessary and allowable by the mandates of Article VIII, sections 12 and 14, of the Montana constitution, regarding financial accountability and expenditure by appropriation."

Section 3. Section 53-3-109, MCA, is amended to read:

**"53-3-109. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Able-bodied" means the condition of a person who is not infirm.

(2) "Basic necessities" means food, shelter, utilities, and personal needs.

*(3) "Children" means minor and adult children who reside in the same household with their parents. The term includes both adoptive and natural children.*

*(4)* "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

*(5)* "General relief" *or "general relief assistance"* means, in accordance with this chapter, a program of public assistance for basic necessities and medical needs to those persons determined to be eligible for that assistance.

*(6)* "Household" means:

*(a) a collective body of persons consisting of spouses or parents and their children who reside in the same residence; or*

*(b)* all *other* persons who by choice *or* necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

*(7)* "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits, *that is* reasonably certain to be received or *is actually received during the month by members of* a household.

*(8)* "Indigent" or "misfortunate" means a person who is lacking the means, financial or otherwise, by which to prevent destitution for himself and others dependent upon him for basic necessities and who is otherwise eligible for assistance under this chapter.

*(9)* "Infirm" means the condition of a person who is diagnosed by a licensed medical practitioner and confirmed by an expert medical review to have a physical or mental handicap that significantly impairs the person's ability to be employed.

*(10)* "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.

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*(11) "Presumptive income" means the amount of financial assistance that a person would have received under the aid to families with dependent children program, as provided for in Title 53, chapter 4, part 2, if the person had not been determined ineligible due to receipt of lump-sum income, overpayment, fraud, or failure or refusal to comply with requirements for continued participation in the program.*

*(12)* "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

*(13)* "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

*(14)* "Serious medical condition" means a *mental or* physical condition that causes a serious health risk to a person and for which treatment is medically necessary, including pregnancy. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm it through an expert medical review. Necessary treatment includes prenatal care and such other elective treatments as determined by department rule to be medically necessary."

Section 4. Section 53-3-113, MCA, is amended to read:

**"53-3-113. Contested case hearing.** (1) Except as provided in subsection (2), a hearing must be held on request of any person who is dissatisfied with:

(a) an action taken on an application;

(b) an eligibility determination; or

(c) the amount or condition of payment.

(2) A hearing need not be granted if either state or federal law requires automatic grant adjustments for classes of persons unless the reason for an individual appeal is incorrect grant computation.

(3) The applicant or recipient must be informed of the right to request a hearing at the time any adverse action affects his eligibility.

(4) A hearing must be requested within 90 calendar days from the date of notice of adverse action. An applicant is considered to have been given notice on the date the notice is mailed or personally served.

(5) The hearing must be held in:

(a) the person's county of residence;

(b) the county where application is made if residency is unestablished; or

(c) Lewis and Clark County if a real party in interest requests a hearing for an applicant in any county with state-assumed welfare services.

(6) When a real party in interest requests a hearing for an applicant, venue for judicial review of the final administrative action is Lewis and

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Clark County if financial responsibility is alleged to be with a state-assumed county welfare program."

Section 5. Section 53-3-205, MCA, is amended to read:

**"53-3-205. Eligibility for general relief.** (1) A person or persons constituting a household may receive general relief assistance for basic necessities if the household is determined to be eligible under the provisions of this section and is in need of such assistance as a result of their infirmity, misfortune, or indigency.

(2) A household is eligible for general relief *assistance* if the household income, *including presumptive income but* exclusive of the first $50 earned each month by each household member, does not exceed that set forth in the following table:

| Number of Persons in Household | Monthly Income Standard |
|---|---|
| 1 | $212 |
| 2 | 282 |
| 3 | 354 |
| 4 | 426 |
| 5 | 501 |
| 6 | 570 |
| 7 | 642 |
| 8 | 713 |
| 9 | 785 |
| 10 or more | 857 |

*(3)* (a) When the household's income exceeds the monthly income standard for a household of that size because of receipt of lump-sum income, the household will be ineligible for general relief *assistance* for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard for a household of that size. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump sum was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of a lump sum does not preclude eligibility for general relief medical assistance.

*(4)* All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

*(5) Eligibility for general relief assistance must be determined prospectively based on household income and other relevant circumstances reasonably certain to exist in the month in which assistance is to be provided. Once eligibility is determined, an individual must be paid benefits in accordance with the method provided for in 53-3-311.*

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*(6) (a) Except as provided in subsection (6)(b), the equity value of all household resources must be considered available to meet the needs of the individual applying for general relief.*

*(b)* The following resources of a household must be excluded from consideration of resources for eligibility purposes:

*(i)* the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

*(ii)* a motor vehicle that has no more than $1,500 in equity value;

*(iii)* personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

*(iv)* tools of a trade that are essential to the current or future employment of a household member.

*(7)* A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

*(8)* A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

*(9)* For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

*(10)* Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination.

*(11)* An alien determined to be illegally within the United States is not eligible for general relief."

Section 6. Section 53-3-206, MCA, is amended to read:

**"53-3-206. Eligibility for general relief medical assistance.** (1) In order to be considered for eligibility for general relief medical assistance, a person must be found to have a serious medical condition.

(2) Eligibility for general relief medical assistance must be determined as provided in this section and 53-3-205. A person with a serious medical condition must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

(3) All persons who reside in the same residence and are *either married to each other or are the parents or children of other persons living in the same residence* are considered to be one household for purposes of determining general relief medical assistance.

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(4) All individual or household resources must be used to offset medical obligations except those *resources* excluded in 53-3-205*(6) or used to offset nonmedical general relief payments during the same period.*

*(5) A household is ineligible to receive general relief medical assistance if the household is ineligible for medicaid as a result of overpayment, fraud, or failure or refusal to comply with requirements for continued participation in the medicaid program.*

*(6)* To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in 53-3-205(2) is eligible for such medical assistance.

*(7)* In a county with state-assumed welfare services, a person is not eligible for medical services if the household in which he resides has an average monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided in excess of that set forth in the following table:

| Family Size | Monthly Income Level |
|---|---|
| 1 | $ 287 |
| 2 | 433 |
| 3 | 526 |
| 4 | 618 |
| 5 | 714 |
| 6 | 804 |
| 7 | 896 |
| 8 | 988 |
| 9 | 1,081 |
| 10 | 1,173 |
| 11 | 1,194 |
| 12 | 1,215 |
| 13 | 1,236 |
| 14 | 1,256 |
| 15 | 1,277 |
| 16 or more | 1,298" |

Section 7. Section 53-3-209, MCA, is amended to read:

**"53-3-209. Period of eligibility.** (1) The period of eligibility for receipt of general relief for basic necessities is 1 month. *Except* as provided in *subsection* (3), *a* person may seek to establish eligibility for the succeeding month prior to the end of the current month of eligibility.

*(2)* Eligibility for general relief medical assistance *is granted for a period of 1 month and* terminates when the serious medical condition of the person has been treated. *Except as provided in subsection (3), continued eligibility for general relief medical assistance may be established in any subsequent month.*

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*(3)* The period of eligibility for any type of general *relief* assistance terminates at any time the county welfare board or the department determines that the household:

(a) no longer meets the applicable eligibility requirements; or

(b) received general relief *assistance* by means of fraud or mistake."

Section 8. Section 53-3-304, MCA, is amended to read:

**"53-3-304. Power to require recipient to participate in job search, training, and workfare programs.** (1) The department shall cooperate with the department of labor and industry and other designated agencies to initiate, promote, and develop job search, training, and *workfare* programs that will contribute to the employability of persons receiving general relief *assistance* under the provisions of this chapter. These programs must be designed to preserve and improve the work habits and job-finding skills of recipients for whom jobs are not otherwise immediately available.

(2) For each county with state-assumed welfare services, the department shall contract with the department of labor and industry or other designated agencies to institute a job search, training, and *workfare programs* that *provide* able-bodied general relief *assistance* recipients with the necessary job-finding skills to seek unsubsidized employment independently.

(3) In a county with state-assumed welfare services, an able-bodied recipient of general relief *assistance* shall enroll in a structured job search and training program at an employment office or other site designated by the department. The program must include but is not limited to the following elements:

(a) assessment and testing;

(b) an employability plan;

(c) remedial education or job skills training, if it is called for in the employability plan and if it provides for immediate referral to an appropriate Job Training Partnership Act program;

(d) a job readiness and job search program that must include but is not limited to:

(i) self-assessment and occupational testing;

(ii) instruction in completing applications, writing resumes, and preparing for interviews;

(iii) identification of and contact with potential employers; and

(iv) participation in simulated job interviews;

(e) a supervised effort to find employment; and

(f) efforts to address barriers to employment.

(4) In addition to the training required in subsection (3), the county department of public welfare or the department of social and rehabilitation

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services may require a recipient to *participate in a workfare program. The purpose of the workfare program is to provide work experience and training for general relief recipients in specifically created work projects operated by a public agency or a private, nonprofit agency. A workfare program established under this section must provide that:*

*(a)* A currently employed worker may *not* be displaced by any recipient (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

*(b)* A recipient may *not* be *given a work experience or training assignment if:*

*(i) the assignment would fill an established unfilled vacancy that exists because an employee has been laid off;* or

*(ii)* the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy *with* a *general relief* recipient.

*(c) A recipient may not be required to participate in a workfare program if participation is determined to interfere with:*

*(i) participation in a job search or job training program; or*

*(ii) attendance in a secondary education program.*

*(d) The maximum number of hours that a recipient may be required to participate in a workfare program and job search and training programs may not exceed 40 hours in a week.*

(5) The county department of public welfare or the department of social and rehabilitation services, as the case may be, shall provide coverage under the Workers' Compensation Act for those recipients of general relief *participating in the workfare program* and may enter into such agreements with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.

*(6)* A recipient who has completed the job search *and training* program provided for in subsection (3) shall:

(a) spend at least 8 hours a week in a supervised effort to find employment; and

(b) for the duration of his eligibility for general relief, spend 32 hours a week, as called for in the employability plan, in:

(i) remedial education;

(ii) counseling;

(iii) job skills training;

(iv) *workfare,* as required in subsection (4); or

(v) job-seeking or other related activities.

*(7)* Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the area where

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it is proposed to assign the recipient to *a workfare assignment*, an opportunity must be provided for that organization to submit comments with respect to such proposal.

*(8) A workfare* program may *not* impair existing contracts for services or collective bargaining agreements, and *a workfare* program that would be inconsistent with the terms of a collective bargaining agreement may *not* be undertaken without the written concurrence of the labor organization and employer concerned."

Section 9. Section 53-3-309, MCA, is amended to read:

"**53-3-309. Form of relief.** The choice as to the form or forms of relief provided is at the discretion of the county welfare department in counties without state-assumed welfare services or the department if the state has assumed responsibility for the welfare services in a county. *The form of relief may include but is not limited to cash, checks, vouchers, lines of credit, in-kind goods and services, and food commodities.*"

Section 10. Section 53-3-311, MCA, is amended to read:

"**53-3-311. Amount of general relief for basic necessities.** (1) In a county without state-assumed welfare services, the amounts of general relief for basic necessities must be determined and adopted at the discretion of the county welfare board.

(2) In a county with state-assumed welfare services, the amount of general relief for basic necessities available to an eligible household is the amount listed for the same size household in the table in 53-3-205(2), less *countable* income and resources not excluded in 53-3-205*(6)*.

*(a) Countable income during the first 2 months of continuous eligibility is the income the household is likely to receive during the benefit month less the amounts excluded in 53-3-205(2).*

*(b) Countable income in the third and all consecutive continuous months of eligibility is the income the household received in the second calendar month immediately preceding the benefit month less the amounts excluded in 53-3-205(2).*"

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. **Effective date.** [This act] is effective July 1, 1989.

Approved April 5, 1989.

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# CHAPTER NO. 452

[SB 18]

AN ACT TO ALLOW THE PUBLIC SERVICE COMMISSION TO TREAT ADVERTISING COSTS THAT PROMOTE INCREASED USE OF REGULATED COMMUNICATIONS SERVICES AS AN EXPENSE DEDUCTIBLE FROM INCOME OR CAPITAL ASSETS WHEN SETTING OR REGULATING RATES; AND AMENDING SECTION 69-3-307, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-3-307, MCA, is amended to read:

"**69-3-307. Treatment of advertisement costs and contributions.** Costs or expenses incurred by public utilities for advertising, transfers of funds without full and adequate consideration, contributions, donations, and gifts may not be treated as expenses deductible from income or from capital assets or in any other manner by the public service commission in setting or regulating rates which may be charged by the public utilities pursuant to this chapter. This section shall not apply to advertising which encourages the conservation of energy or product safety or informs the public of the availability of alternative forms of energy or recommends usage at times of lower rates or lower demand. Furthermore, for communications public utilities, the provisions of this section shall not apply to advertising which relates to special equipment that is available to aid the handicapped or to special services that are designed to protect the public health, welfare, and safety, *to* promote more efficient use of a communications system, *or to promote increased use of regulated communications services.*"

Approved April 5, 1989.

# CHAPTER NO. 453

[SB 67]

AN ACT TO EXTEND MEDICAL ASSISTANCE ELIGIBILITY FOR PERSONS WHO LOSE ELIGIBILITY FOR AID TO FAMILIES WITH DEPENDENT CHILDREN DUE TO INCREASED HOURS OR INCOME FROM EMPLOYMENT OR BECAUSE OF LOSS OF EARNED INCOME DISREGARDS; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Extension of eligibility for medical assistance to persons terminated from aid to families with dependent children.** (1) In accordance with section 1925 of Title XIX of the Social Security Act [42

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U.S.C. 1396r-6], the department of social and rehabilitation services shall provide for the extension of eligibility for medical assistance to persons who lose eligibility for aid to families with dependent children due to:

(a) increased hours or income from employment; or

(b) loss of federally prescribed earned income disregards.

(2) In providing for the extension of eligibility for medical assistance under subsection (1), the department may provide for health insurance or other health coverage in accordance with subsections 1925(a)(4)(B) and 1925(b)(4)(C) of Title XIX of the Social Security Act [42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C)] and may exercise the other options contained in section 1925 of Title XIX of the Social Security Act [42 U.S.C. 1396r-6] regarding the provision of medical assistance.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 1].

Section 4. **Effective dates.** (1) [Section 1] is effective on the date the federal act becomes effective.

(2) [Sections 2, 3, and this section] are effective on passage and approval.

Approved April 5, 1989.

# CHAPTER NO. 454

[SB 178]

AN ACT PROVIDING A SUPPLEMENTAL ALLOWANCE TO CERTAIN MEMBERS OF THE MONTANA FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM HIRED ON OR AFTER JULY 1, 1981; AMENDING SECTION 19-11-606, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-11-606, MCA, is amended to read:

**"19-11-606. Supplement to certain pensions.** (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state that is authorized to effect insurance on risks enumerated in 19-11-512, there is a tax of 1 ½% on the fire portion of the direct premiums received during the calendar year of *1989* and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in the state special revenue fund. The proceeds of such

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tax are statutorily appropriated, as provided in 17-7-502, to the auditor, who shall pay claims as provided in subsection (2) of this section and 19-13-1006. *If sufficient cash remains in the fund each year after the payment of claims as provided in subsection (2) of this section and 19-13-1006, the state auditor shall deposit any excess amount in the account provided for in [section 3].*

(2) Effective January 1, 1976, each association shall pay to the firefighters retired before July 1, 1973, or their surviving spouses and children a monthly pension of not less than one-half the regular monthly salary paid to a confirmed active firefighter of that city, as provided each year in the budget of that city. In the case of volunteer firefighters, the pension may not exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of each association shall request and the state auditor shall issue from the state special revenue fund and deliver to the treasurer of the respective city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their surviving spouses and children received from the fund and one-half of the salary paid by the respective city or town to a confirmed active firefighter for the fiscal year just preceding. The state auditor shall, at the same time, report to the treasurer of the appropriate association the amount of any payment delivered to the board of investments.

(b) The treasurer of a city or town receiving funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of the association shall utilize these funds to increase the monthly pension of retirees or their surviving spouses and children to an amount equal to one-half of the salary that was paid to a confirmed active firefighter in the city or town for the preceding year."

Section 2. **Supplement to certain retirement allowances.** (1) The administrator shall pay a supplemental allowance from the account provided for in [section 3] to each member hired on or after July 1, 1981, who has both completed 25 years of service and reached age 50 as an active firefighter or to his surviving spouse or dependent children. Except as provided in subsection (2), the supplemental allowance, when added to the service retirement allowance, must equal one-half the regular monthly compensation paid to a newly confirmed full-paid active firefighter of the city that last employed him as a firefighter as provided each year in the budget of that city. If after a member retires, the city that last employed him no longer employs a full-paid firefighter, the member's supplemental allowance must be calculated on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the plan and employ a full-paid firefighter.

(2) If the amount available to the account is insufficient to fully fund the supplemental allowance provided for in subsection (1), the supplemental allowance for each eligible member must be reduced by an equal percentage so that the amount contained in the account is not exceeded.

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Section 3. **Separate account for certain supplementary allowances.** There is created in the state treasury an account within the pension trust fund provided for in 19-13-501 to which must be credited all amounts transferred under 19-11-606(1). The money in the account must be used to pay the supplementary allowances provided for in [section 2].

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 19, chapter 13, part 10, and the provisions of Title 19, chapter 13, part 10, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 19, chapter 13, part 5, and the provisions of Title 19, chapter 13, part 5, apply to [section 3].

Section 6. **Effective date.** [This act] is effective July 1, 1989.

Approved April 5, 1989.

# CHAPTER NO. 455

[SB 353]

AN ACT TO ALLOW LOCAL LAW ENFORCEMENT AGENCIES TO REQUEST ASSISTANCE FROM THE NATIONAL GUARD AND TACTICAL TEAMS FROM OTHER JURISDICTIONS DURING TACTICAL INCIDENTS; TO EMPOWER THE GOVERNOR TO AUTHORIZE THE NATIONAL GUARD ASSISTANCE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Tactical Incident Assistance Act".

Section 2. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Jurisdiction" means the jurisdiction of any law enforcement agency within Montana.

(2) "Tactical incident" means any situation in which it is reasonable to expect the possibility of the loss of life or the taking of a hostage unless extraordinary steps are taken. These situations may include but are not limited to:

(a) a barricaded gunman;

(b) a person taken hostage;

(c) arrests in extraordinary circumstances;

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(d) civil disorder;

(e) terrorist activity;

(f) protection of a dignitary; and

(g) courtroom security in extraordinary circumstances.

(3) "Tactical team" means a small group of highly disciplined law enforcement officers trained to provide a quick and ready response to high risk conditions and situations that go beyond the capabilities of normally trained and equipped officers. With specialized training, tactics, and equipment, this small group of officers provides a greater expectation of resolving incidents without loss of property, injury, or loss of life.

Section 3. **Tactical team aiding another jurisdiction.** (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may request the assistance of a tactical team from another jurisdiction.

(2) A tactical team called to another jurisdiction has peace officer status in that jurisdiction under the authority of the requesting agency.

Section 4. **Local agency to contact national guard.** (1) If a tactical incident exceeds the capability of a local law enforcement agency, the agency administrator may call the national guard staff duty office for assistance as provided in [section 5].

(2) The national guard staff duty officer shall inform the governor of the request.

Section 5. **Tactical incident — national guard assistance.** (1) Upon request by a local law enforcement agency administrator, the governor may order the national guard to provide transportation services and the use of national guard equipment to the requesting agency tactical team or to tactical teams that are providing assistance to the requesting agency during a tactical incident.

(2) This section does not give the national guard the status or authority of peace officers.

Section 6. **Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 10, and the provisions of Title 10 apply to [sections 1 through 5].

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Approved April 5, 1989.

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# CHAPTER NO. 456

[SB 398]

AN ACT TO AUTHORIZE A FUNERAL DIRECTOR OR MORTICIAN TO OBTAIN A COPY OF A DEATH CERTIFICATE; AND AMENDING SECTION 50-15-112, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-15-112, MCA, is amended to read:

**"50-15-112. Inspection of records and issuance of copies limited.** (1) The department may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to:

*(a)* the interests of the persons described in 50-15-206 for the purposes of custody actions, social security eligibility determinations, or Indian tribal enrollment determinations; *and*

*(b) the interest of a funeral director or mortician licensed under Title 37, chapter 19, with respect to the funeral of a deceased individual named on a death certificate.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 5, 1989.

# CHAPTER NO. 457

[SB 399]

AN ACT TO REVISE THE METHOD FOR COMPUTING PROPERTY COSTS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED SO THEY EQUAL THE LESSER OF HISTORICAL COSTS OR THE RATE USED FOR ALL OTHER INTERMEDIATE CARE FACILITIES; DIRECTING AN AMENDMENT TO RULE 46.12.1204, ADMINISTRATIVE RULES OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, present rules relating to nursing homes that furnish care for mentally retarded patients provide nearly insurmountable hurdles and no incentives to selling the business; and

WHEREAS, rules adopted by the Department of Social and Rehabilitation Services allow all other intermediate care facilities in the state, except

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for those that care for the mentally retarded, a method for determining a price for the sale of a facility that allows a new owner to receive a fair rate of return on investment that justifies the purchase of the facility.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Department to amend rule.** The department of social and rehabilitation services shall amend rule 46.12.1204, Administrative Rules of Montana, to allow the sale of an intermediate care facility for the mentally retarded that is made after July 1, 1982, to have property costs computed for the new owner at the lesser of historical costs or the rate used for all other intermediate care facilities, subject to the limitations in 42 U.S.C. 1396a(a)(13)(C).

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 5, 1989.

# CHAPTER NO. 458

[SB 426]

AN ACT TO REVISE THE MONTANA CLEAN INDOOR AIR ACT TO ALLOW THE PROPRIETOR OR MANAGER OF AN ENCLOSED PUBLIC PLACE TO DESIGNATE AND RESERVE THE ENTIRE AREA AS A NONSMOKING AREA; AMENDING SECTION 50-40-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-40-104, MCA, is amended to read:

**"50-40-104. Designation or reservation of smoking or nonsmoking areas — notice.** (1) *The* proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs;

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation*; or*

*(d) designate and reserve the entire area as a nonsmoking area.*

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

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(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 5, 1989.

# CHAPTER NO. 459

[SB 433]

AN ACT AUTHORIZING STATE DISTRICT COURTS TO EXERCISE PERSONAL JURISDICTION OVER A NONRESIDENT PARENT IN A CHILD SUPPORT ACTION WHEN THE NONRESIDENT PARENT HAS SIGNIFICANT TIES TO THIS STATE.

WHEREAS, the state of Montana has both a social and an economic interest in ensuring that minor children residing in or having significant connections with this state receive ample financial support from their nonresident parents; and

WHEREAS, the procedure established by the Uniform Reciprocal Enforcement of Support Act of 1968 (URESA), while valuable in many instances, sometimes causes delay in obtaining support orders; and

WHEREAS, empowering state district courts to adjudicate child support actions over nonresident parents with ties to the state of Montana will enhance child support collection efforts; and

WHEREAS, enactment of [this act] will permit Montana courts to exercise the most extensive jurisdiction over child support actions involving nonresident parents as is permissible under the constitutions of the United States and Montana.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Child support jurisdiction — nonresident parent.** A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident parent in a child support determination in the initial or modification decree if:

(1) the nonresident parent has resided with the child in this state;

(2) (a) the nonresident parent maintained a marital domicile in this state from which the child was conceived or adopted; and

(b) the other party to the marital relationship or the child resides within this state;

(3) the child was conceived or adopted within this state when at least one parent was a resident; or

(4) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 5, 1989.

# CHAPTER NO. 460

[SB 442]

AN ACT TO AUTHORIZE EMERGENCY DETAINMENT OF A PERSON WHO IS SUSPECTED OF HAVING COMMUNICABLE TUBERCULOSIS AND WHO IS LIKELY TO LEAVE THE JURISDICTION TO AVOID A HEARING ON COMMITMENT AND TREATMENT OF TUBERCULOSIS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Emergency detainment — petition — detention.** (1) If a physician, the department, or a local health officer reasonably believes that a person has communicable tuberculosis and that he is likely to attempt to leave the jurisdiction to avoid a hearing on commitment to a hospital, the physician, department, or local health officer shall notify the sheriff of the county in which the person is found, who shall cause the person to be detained in a hospital. At least by the next regular business day, the physician, department, or local health officer shall petition for an order from the district court of the county in which the person is found for continued detention of the person and to require examination or treatment for tuberculosis pursuant to 50-17-105. The sheriff must serve the summons required by 50-17-106 on the person the same day the petition is filed.

(2) Immediately after the petition is filed the court will decide whether further emergency detention is required and may order continued hospital detention of the person for no more than 7 days if it finds that the person is an unacceptable danger to the public health and safety in that he probably has communicable tuberculosis and unless detained will probably leave the jurisdiction to avoid a hearing pursuant to this part.

(3) The district court of the county in which the person is found has jurisdiction over the person for the purposes of this section. The district

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court may, in the interests of justice, order that jurisdiction over further proceedings be transferred to the district court of the county of the person's residence.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 17, part 1, and the provisions of Title 50, chapter 17, part 1, apply to [section 1].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 5, 1989.

# CHAPTER NO. 461

[SB 452]

AN ACT GENERALLY REVISING THE LAWS RELATING TO JAILS, JAIL ADMINISTRATORS, AND INMATES; REDEFINING JAILS AS DETENTION CENTERS; DEFINING TERMS; PROVIDING FOR THE ADMINISTRATION OF DETENTION CENTERS; PROVIDING FOR MULTIJURISDICTIONAL DETENTION CENTERS; REGULATING DETENTION OF JUVENILES IN DETENTION CENTERS; REQUIRING INMATES TO PAY CONFINEMENT COSTS; ALLOWING THE TEMPORARY RELEASE OF INMATES; CREATING CRIMINAL OFFENSES RELATED TO THE TREATMENT OF INMATES; AMENDING SECTIONS 7-32-2121, 7-32-2123, 7-32-2127, 7-32-2128, 7-32-2132, 7-32-2143, 7-32-2201 THROUGH 7-32-2205, 7-32-2207, 7-32-2208, 7-32-2211, 7-32-2222, 7-32-2231 THROUGH 7-32-2234, AND 7-32-4201, MCA; AND REPEALING SECTIONS 7-32-2206, 7-32-2209, 7-32-2210, 7-32-2212, 7-32-2213, 7-32-2221, 7-32-2223, 7-32-4202, AND 7-32-4203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in this part, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) "Detention center staff" means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

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(4) "Inmate" means a person who is confined in a detention center.

(5) "Local government" means a city, town, county, or consolidated city-county government.

(6) "Multijurisdictional detention center" means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) "Private detention center" means a detention center owned by private industry and leased to or operated under a contract with a local government.

Section 2. **Use of detention center — payment of costs.** (1) Local government, state, and federal law enforcement and correctional agencies may use any detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for the detention center.

(2) If a person is committed to a detention center by a government unit not responsible for the operation of the detention center, the committing government unit shall pay the costs of holding the person in confinement as agreed upon by the government unit and the detention center, except that if a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county. Payments must be made to the government unit responsible for the detention center or to the administrator operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to the committing government unit.

Section 3. **Contracts for detention center services.** (1) Contracts concerning detention center services and facilities between state or local government units, the state of Montana, or the federal government must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(2) A government unit responsible for a detention center may contract with a government unit of another state for the confinement of lawfully committed inmates in a detention center located in either jurisdiction.

Section 4. **Juvenile detention center standards.** (1) Juveniles may be held in a detention center only in accordance with 41-5-301 through 41-5-309.

(2) Detention centers that hold juveniles must comply with the standards for the detention of juveniles promulgated by the department of family services.

Section 5. **Payment of confinement costs by inmate.** An inmate found by the sentencing court to have the ability to pay is liable for the costs of his confinement in a detention center. The rate at which the inmate must pay the costs must be established at the sentencing hearing.

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Section 6. **Temporary release from detention center.** A detention center inmate may be granted, by court order and with the consent of the sheriff, the privilege of leaving the detention center during necessary and reasonable hours for any of the following purposes:

(1) seeking employment;

(2) working at his employment;

(3) conducting his own business or self-employment;

(4) attending to the needs of his family;

(5) attending an educational institution; or

(6) obtaining medical treatment.

Section 7. **Annoyance of inmate prohibited — penalty.** (1) The detention center administrator or staff member in charge of an inmate must use necessary and proper means to protect an inmate from purposeful or knowing insults and annoyance by others and to prevent others from communicating with the inmate while the inmate is at or is going to or returning from employment.

(2) A person persisting in purposefully or knowingly insulting, annoying, or communicating with an inmate after being told by the detention center administrator or staff member to desist commits the offense of inmate annoyance.

(3) A person convicted of the offense of inmate annoyance shall be fined an amount not to exceed $500.

Section 8. **Inmate endangerment — penalty.** (1) A detention center administrator or staff member commits the offense of inmate endangerment if he knowingly:

(a) places or keeps a juvenile with adult inmates;

(b) uses corporal punishment against an inmate; or

(c) uses physical force against an inmate, except as necessary for:

(i) self-defense;

(ii) control of inmates;

(iii) protection of another person from imminent physical attack; or

(iv) prevention of riot or escape.

(2) A person who commits the offense of inmate endangerment shall be fined an amount not to exceed $500.

Section 9. Section 7-32-2121, MCA, is amended to read:

**"7-32-2121. Duties of sheriff.** The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

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(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the *detention center* and the *inmates* therein, unless the *detention center* is operated by a private party under an agreement entered into under 7-32-2201 or by a *detention center* administrator *or by another local government*;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the papers without delay;

(11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(12) perform such other duties as are required by law."

Section 10. Section 7-32-2123, MCA, is amended to read:

**"7-32-2123. Appointment of detention center staff.** A sheriff who operates a *detention center under* 7-32-2121 may appoint deputy sheriffs or nonsworn individuals as *detention center staff*. A nonsworn individual appointed *to the detention center staff* need not receive the same salary as a deputy sheriff."

Section 11. Section 7-32-2127, MCA, is amended to read:

**"7-32-2127. Prosecution of action involving county law enforcement personnel brought against executor or administrator.** Any action for default or misconduct of any sheriff, his undersheriff, his *detention center staff*, or any of his deputies may be prosecuted against the executors or administrators of such sheriff."

Section 12. Section 7-32-2128, MCA, is amended to read:

**"7-32-2128. False claims by detention center administrator or sheriff.** (1) Every *detention center administrator* who falsely represents to the *governing body of a local government* the actual expenses of boarding *detention center inmates*, furnishing food and supplies, or *providing services* or *who* presents to *the governing body* false items in a claim or false vouchers or, *if he is not a private detention center administrator*, makes

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any profit *from* the keeping of *inmates* in his custody and every person who gives a false item or false voucher to be used by *the detention center administrator* in any claim against the *local government* is guilty of a misdemeanor.

(2) Every sheriff who falsely represents to the board of county commissioners or attorney general his actual traveling expenses in the performance of any official duty or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of *his* duty is guilty of a misdemeanor."

Section 13. Section 7-32-2132, MCA, is amended to read:

**"7-32-2132. Liability for escape in civil actions.** (1) A *detention center* administrator who fails to prevent the escape or rescue of a person in his custody arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the *detention center* administrator is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the *detention center* administrator is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the *detention center* administrator is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue of a person in his custody, the *detention center* administrator may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a *detention center* administrator for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the *inmate* returns to the *detention center* or is retaken by the *detention center* administrator."

Section 14. Section 7-32-2143, MCA, is amended to read:

**"7-32-2143. Mileage and expenses of sheriff in general.** (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to *a detention center* only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to *a detention center.* He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting

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and feeding such persons during such transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more *inmates*, only one mileage may be charged.

(2) No mileage may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

(3) (a) No mileage may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one mileage may be allowed or charged; and in the service of subpoenas, only one mileage may be charged when the persons named therein live in the same place or in the same direction; but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one mileage may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case may be allowed for less than 1 mile actually traveled.

(4) In lieu of charging mileage for the service of items of a civil nature as provided in subsections (1) and (3), a sheriff may charge $1 for the service of each item of a civil nature that requires a return or proof of service."

Section 15. Section 7-32-2201, MCA, is amended to read:

**"7-32-2201. Establishing detention center — detention center contract — regional detention center.** *For the confinement of lawfully committed persons, the governing body of a county may participate in or undertake one or more of the following:*

(1) A *detention center may* be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the *governing body* of two or more *local governments* it is necessary or desirable to build, provide, or utilize a *multijurisdictional detention center*, they may do so in any of the *jurisdictions* concerned. *The multijurisdictional detention center* shall be built or provided and kept in good repair at the expense of the *local governments* concerned on a basis as the *governing bodies* agree.

(2) A county or two or more *local governments* acting together may provide for the *detention center allowed* by subsection (1) by:

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(a) establishing in the county government the position of *detention center* administrator and hiring a person, who is answerable to the governing body of the county, to fill the position *or appointing the sheriff as detention center administrator*; or

(b) entering into an agreement with a private party under which the private party will provide, maintain, or operate the *detention center.*

(3) The *detention centers* in this state are kept by the *detention center* administrators of the *local governments* in which they are situated. In the case of a *multijurisdictional detention center* as provided in subsection (1), *the detention center* shall be kept by the *local governments* utilizing the *detention center* on a basis as the *governing bodies* agree.

(4) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a *detention center* to be erected, furnished, maintained, *and operated. The costs must be paid for out of the county treasury.*"

Section 16. Section 7-32-2202, MCA, is amended to read:

"**7-32-2202. Use of detention center in contiguous county.** (1) When there is no *detention center* in the county or when the *detention center* becomes unfit or unsafe for the confinement of *inmates*, the district judge may, by written appointment filed with the clerk, designate the *detention center* of a contiguous county for the confinement of the *inmates* of his county and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the *detention center administrator* of each county *involved*, who must receive into his *detention center* all *inmates* authorized to be confined therein pursuant to this section and who is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he were the *detention center* administrator of the county for whose use his *detention center* is designated. With respect to the persons so committed, he is deemed the *detention center* administrator of the county from which they were removed.

(3) When a *detention center* is erected in the county for the use of which the designation was made or its *detention center* is rendered fit and safe for the confinement of *inmates*, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk must immediately serve a copy of the revocation upon the *detention center administrator* of each county *involved.* The *detention center administrator* in the designated county must thereupon remove the *inmates* to the *detention center* from which the removal was had."

Section 17. Section 7-32-2203, MCA, is amended to read:

"**7-32-2203. Who may be confined in a detention center.** *Detention centers* are used as follows:

(1) for the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

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(2) for the detention of persons charged with crime and committed for trial;

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law;

(4) for the confinement of persons sentenced to imprisonment therein upon conviction of a crime;

*(5) for the confinement of persons sentenced to the state prison, as agreed upon by the state and the administrator in charge of the detention center.*"

Section 18. Section 7-32-2204, MCA, is amended to read:

"**7-32-2204. Maintenance of detention center.** The county commissioners, or the private party when provided in an agreement entered into under 7-32-2201(2), have the duty of building, *operating,* inspecting, and repairing the *detention center* and must take all necessary precautions against escape, sickness, or infection."

Section 19. Section 7-32-2205, MCA, is amended to read:

"**7-32-2205. Confinement of inmates.** The *detention center* administrator *shall* receive all persons committed to *the detention center* by competent authority and provide them with necessary food, clothing, and bedding."

Section 20. Section 7-32-2207, MCA, is amended to read:

"**7-32-2207. Confinement of persons on civil process.** (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the *detention center* administrator is not bound to receive such person unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding or to detain such person any longer than these expenses are provided for.

(2) This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court."

Section 21. Section 7-32-2208, MCA, is amended to read:

"**7-32-2208. Actual confinement of inmates required.** *An inmate* committed to *a detention center* for trial, for examination, or upon conviction must be actually confined in the *detention center* until he is legally discharged."

Section 22. Section 7-32-2211, MCA, is amended to read:

"**7-32-2211. Service of papers upon detention center administrator for prisoner.** A *detention center administrator* upon whom a paper in a judicial proceeding, directed to *an inmate* in his custody, is served must forthwith deliver it to the *inmate.*"

Section 23. Section 7-32-2222, MCA, is amended to read:

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"**7-32-2222. Health and safety of prisoners.** (1) *Each detention center must comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.*

*(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.*

*(3) When there is good reason to believe that the inmates may be injured or endangered, the detention center administrator must remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.*

*(4) If in the opinion of the detention center administrator an inmate under his jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the agency or authority at whose instance the inmate was arrested when the arresting agency or authority is not the county in which the inmate is confined, except that if a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county. The county attorney shall initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved if he determines the inmate is financially able to pay.*"

Section 24. Section 7-32-2231, MCA, is amended to read:

"**7-32-2231. Purpose to allow private industry involvement.** It is the purpose of 7-32-2231 through 7-32-2234 to allow *multijurisdictional* or *single-jurisdiction detention centers* to be built by private industry and leased to the participating *local government or governments* for operation by the *local government*, collectively by participating *local governments*, or by a private entity with the concurrence of the *local governments* involved."

Section 25. Section 7-32-2232, MCA, is amended to read:

"**7-32-2232. Detention centers — contracts with private parties.** (1) The term of an agreement under 7-32-2201 with a private party may not exceed 3 years.

(2) The agreement must include:

(a) detailed standards for the operation of the *detention center* and the incarceration of *inmates*;

(b) a performance bond from the private party acceptable to the *local government*;

(c) a promise from the private party to indemnify the *local government* for any damages for which the *local government* is found liable as a result of the operation of the *detention center*;

(d) a provision that the private party must purchase liability insurance in an amount acceptable to the *local government*;

(e) minimum standards for the training of *detention center staff* and a provision that the private party will ensure such training;

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(f) a provision that the *local government* may immediately terminate the contract for good cause; *and*

*(g) a provision that the detention center will meet the standards of the detention center standards commission.*

(3) The provisions of Title 7 relating to bids for *local government* contracts and purchases do not apply to a contract entered into under 7-32-2201 and this section."

Section 26. Section 7-32-2233, MCA, is amended to read:

**"7-32-2233. Requests for contract proposals.** (1) A *local government* seeking to enter into a contract under 7-32-2201 and 7-32-2232 may publish a request for proposals. The request for proposals must be published in a newspaper of general circulation in the county once a week for 3 successive weeks and must include information concerning the type of *detention center* services required.

(2) Requests for proposals must be sent to persons who have previously requested that their names be placed on a list of persons providing *detention center* services. The Montana board of crime control shall maintain a list of persons providing *detention center* services and furnish the list to a *local government* upon request.

(3) In selecting a proposal and awarding a contract, a *local government* need not accept the proposal with the lowest cost.

(4) The *local government* must base its selection on demonstrated competence, knowledge and qualifications, the reasonableness of the services proposed, and the reasonableness of the proposed contract price for the *detention center* services.

(5) A copy of all proposals must be kept available for public inspection in the office of the county clerk and recorder.

(6) The *local government* must give specific reasons for its selection of a proposal. The reasons must be recorded in the minutes of the governing body of the *local government*."

Section 27. Section 7-32-2234, MCA, is amended to read:

**"7-32-2234. Powers of detention center administrators.** A *detention center* administrator is responsible for the immediate management and control of the *detention center* subject to general policies and programs established pursuant to the agreement provided for in 7-32-2201(2) and any applicable interlocal agreement. The powers of such an administrator and *detention center* personnel employed under his authority include control over *inmates*:

(1) within the confines and grounds of the *detention center*; and

(2) outside the *detention center* confines and grounds while transporting any *inmate* or in the hot pursuit or apprehension of any escapee."

Section 28. Section 7-32-4201, MCA, is amended to read:

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**"7-32-4201. Municipal detention centers authorized.** The city or town council has power to establish and maintain a *detention center, as defined in [section 1],* for the confinement of persons convicted of violating the ordinances of the city or town *and* to make rules for the government of the same."

Section 29. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, parts 21 and 22, and the provisions of Title 7, chapter 32, parts 21 and 22, apply to [section 1].

Section 30. **Coordination instruction.** If [____ Bill No. ____ (LC 20)] is not passed and approved, the amendment in [section 25 of this act] that inserts 7-32-2232(2)(g) is void.

Section 31. **Repealer.** Sections 7-32-2206, 7-32-2209, 7-32-2210, 7-32-2212, 7-32-2213, 7-32-2221, 7-32-2223, 7-32-4202, and 7-32-4203, MCA, are repealed.

Approved April 5, 1989.

# CHAPTER NO. 462

[SB 196]

AN ACT INCREASING SALARIES PAID SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; SEPARATING SALARIES OF NONPARTISAN JUDICIAL OFFICERS FROM SALARIES OF PARTISAN ELECTED OFFICIALS; AMENDING SECTIONS 2-16-405, 3-2-104, AND 3-5-211, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Salaries of supreme court justices.** (1) The salary of the chief justice of the supreme court is $54,722 for the fiscal year beginning July 1, 1989, and $57,722 for each fiscal year thereafter.

(2) The salary of a justice of the supreme court is $53,452 for the fiscal year beginning July 1, 1989, and $56,452 for each fiscal year thereafter.

Section 2. Section 2-16-405, MCA, is amended to read:

**"2-16-405. Salaries of certain elected state officials.** The salaries paid to certain elected officials of the state of Montana for fiscal year 1986 and following years are:

| | |
|---|---|
| Governor | $50,452 |
| Lieutenant governor | $36,141 |
| Attorney general | $46,016 |
| State auditor | $33,342 |
| Superintendent of public instruction | $39,672 |
| Public service commission chairman | $37,363 |
| Public service commissioners, other than chairman | $36,141 |

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| | |
|---|---|
| Secretary of state | $33,342 |
| Clerk of the supreme court | $32,401" |

Section 3. Section 3-2-104, MCA, is amended to read:

**"3-2-104. Salaries — expenses.** (1) The salaries of justices of the supreme court are provided for in *[section 1]*.

(2) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties."

Section 4. Section 3-5-211, MCA, is amended to read:

**"3-5-211. Salaries and expenses of district judges.** (1) The annual salary of each district judge is *$52,178 for the fiscal year beginning July 1, 1989, and $55,178 for each fiscal year thereafter.*

(2) Actual and necessary expenses for each district judge shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of his official duties."

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved April 6, 1989.

# CHAPTER NO. 463

[HB 169]

AN ACT PROVIDING THAT WHEN IMPOSITION OF A SENTENCE IS DEFERRED, THE DEFERRAL PERIOD HAS PASSED, AND THE CHARGES ARE DISMISSED, THE DEFENDANT'S RECORD MAY NOT BE EXPUNGED; PROVIDING FOR NOTICE OF DISMISSAL; RESTRICTING ACCESS TO THE RECORDS; AMENDING SECTION 46-18-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-18-204, MCA, is amended to read:

**"46-18-204. Dismissal after deferred imposition.** Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. *A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed all records and data relating to the charge are confidential criminal justice information as*

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*defined in 44-5-103 and public access to the information can only be obtained by district court order upon good cause shown."*

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1989.

# CHAPTER NO. 464

[HB 211]

AN ACT ALLOWING AN APPLICANT FOR LICENSURE AS A NURSING HOME ADMINISTRATOR TO SATISFY THE EDUCATION AND EXPERIENCE REQUIREMENTS BY PRESENTING EVIDENCE OF SUFFICIENT EDUCATION, TRAINING, OR EXPERIENCE, OR A COMBINATION OF EDUCATION, TRAINING, AND EXPERIENCE; AND AMENDING SECTION 37-9-301, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill to clarify the extension of existing authority to make rules on the subject of the provisions of this act.

It is the intent of this legislature that the board of nursing home administrators adopt rules governing the qualifications for licensure as a nursing home administrator, which qualifications are reasonably related to the performance of the functions normally carried out by those serving as nursing home administrators.

Any course of instruction, training, or education prescribed by the board should be related to the performance of the functions normally carried out by those employed as nursing home administrators and the protection of patients cared for in nursing homes.

It is also the intent of the legislature that the board not require a baccalaureate degree unless the federal government mandates such a degree for purposes of the state receiving federal financial participation for medicare.

The intent of the legislature is not to exclude qualified individuals because they do not meet an arbitrary standard that does not bear a strong relationship to expected job performance, but to exclude only those who are truly unqualified in the judgment of the board. The legislature intends that the written examination provided for in subsection (1)(c) of [the act] provides additional protection to the public in screening out unqualified candidates.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-9-301, MCA, is amended to read:

**"37-9-301. Qualifications for licensure — examination.** (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for

nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:

(a) is of good character, of sound physical and mental health, has received a high school diploma or its equivalent; *and*

(b) *(i)* has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or

*(ii)* has presented evidence satisfactory to the board of sufficient education, training, or experience, *or a combination of education, training, and experience* in the fields *referred to in subsection (1)(b)(i)* to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)*(i)*.

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended."

Section 2. **Grandfather clause.** A person licensed as a nursing home administrator on [the effective date of this act] does not have to present evidence satisfactory to the board of sufficient education as required by 37-9-301(1)(b)(ii) in order to renew his license as a nursing home administrator.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 6, 1989.

# CHAPTER NO. 465

[HB 222]

AN ACT TO GENERALLY REVISE THE LAW RELATING TO THE DISCIPLINE OF BARBER LICENSEES; ALLOWING THE BOARD OF BARBERS TO DISCIPLINE A LICENSED BARBER; ALLOWING THE BOARD TO DEFINE, BY RULE, UNPROFESSIONAL CONDUCT; AND AMENDING SECTION 37-30-425, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-30-425, MCA, is amended to read:

**"37-30-425. Refusal, suspension, or revocation of license.** The board may, after notice and opportunity for a hearing, refuse to issue or renew or may suspend or revoke *the license of* a *barber or the licenses of*

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*any* barbershop, barber school, or college for any of the following *acts of a licensee*:

(1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); 37-30-406; 37-30-407; 37-30-412; 37-30-413; *or* 37-30-421;

(2) malpractice or incompetency;

(3) continued practice by a person knowingly having an infectious or contagious disease;

(4) advertising by means of knowingly false or deceptive statements;

(5) advertising, practicing, or attempting to practice under a trade name other than one's own;

(6) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(7) the violation of any of the rules adopted pursuant to 37-30-203, *including rules defining unprofessional conduct.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Code commissioner instruction.** Section 37-30-425 is intended to be renumbered and codified by the code commissioner as an integral part of Title 37, chapter 30, part 5.

Approved April 6, 1989.

# CHAPTER NO. 466

[HB 346]

AN ACT TO ALLOW A SCHOOL DISTRICT OR COMMUNITY COLLEGE DISTRICT TO DESIGNATE SCHOOL OR COMMUNITY COLLEGE FACILITIES AS TOBACCO-FREE AREAS BY EXEMPTING SCHOOL DISTRICTS AND COMMUNITY COLLEGE DISTRICTS FROM THE REQUIREMENT TO PROVIDE SMOKING AREAS IN WORK AREAS; AND AMENDING SECTIONS 50-40-107 AND 50-40-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-40-201, MCA, is amended to read:

"**50-40-201. Reservation of smoking and nonsmoking areas in work areas in state and local government buildings.** In offices and work areas in buildings maintained by the state or a political subdivision, *except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district,* in which seven or more employees of the state or political subdivision are

employed, the manager or person in charge of the work area shall arrange nonsmoking and smoking areas in a convenient area."

Section 2. Section 50-40-107, MCA, is amended to read:

"**50-40-107. Exemptions.** The following shall be exempt from this part:

(1) restrooms;

(2) taverns or bars where meals are not served;

(3) vehicles or rooms seating six or fewer members of the public;

*(4) school district buildings and facilities designated as tobacco-free by the board of trustees of the school district;*

*(5) community college buildings or facilities designated as tobacco-free by the board of trustees of the community college district.*"

Approved April 6, 1989.

# CHAPTER NO. 467

[HB 394]

AN ACT CLARIFYING WHAT INFORMATION MAY BE RELEASED BY THE DEPARTMENT OF JUSTICE IN AN ABSTRACT OF THE DRIVING RECORD OF A LICENSEE; PROVIDING FOR FEES; AMENDING SECTION 61-11-105, MCA; AND REPEALING SECTION 61-6-107, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-11-105, MCA, is amended to read:

"**61-11-105. Release of information — fees.** *(1) The department shall, upon request, furnish a person the individual driving record of a licensee showing the following:*

*(a) licensee identification data and address;*

*(b) driver's license status and expiration date;*

*(c) convictions of the licensee; and*

*(d) traffic accidents in which the licensee was involved.*

*(2) Information* relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may *not* be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena.

*(3) A fee of $3 must be paid for each record requested. A fee of $10 must be paid if a certified record is requested as provided in 61-11-102(6).*

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*Individual driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency."*

Section 2. **Repealer.** Section 61-6-107, MCA, is repealed.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 6, 1989.

# CHAPTER NO. 468

[HB 413]

AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, IN CONJUNCTION WITH ONE OR MORE HOLDERS OF VALID WATER RIGHTS IN THE SOURCE, TO APPLY TO THE DISTRICT COURT FOR APPOINTMENT OF A WATER COMMISSIONER IN A SOURCE OR AREA WHERE A FINAL DECREE HAS BEEN ISSUED; PROVIDING THAT THE DEPARTMENT MAY BE INCLUDED IN THE APPORTIONMENT OF COSTS IF IT APPLIES FOR APPOINTMENT OF A WATER COMMISSIONER; AMENDING SECTION 85-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-5-101, MCA, is amended to read:

**"85-5-101. Appointment of water commissioners.** (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it *is* the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under chapter 2 of this title, the judge of the district court *may* upon application by *both* the department of natural resources and conservation *and one or more holders of valid water rights in the source* appoint a water commissioner. The

water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by *the district* court. The court may make an order requiring the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use *of the water.*

(4) At the time of the appointment of *a* water commissioner or commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters, including permittees and certificate holders, shall pay their proportionate share of fees and compensation. *The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).*

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to *the* irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of *the* stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1989.

## CHAPTER NO. 469

[HB 166]

AN ACT TO ALLOW A CREDIT AGAINST MONTANA INDIVIDUAL INCOME TAX FOR CERTAIN EXPENSES INCURRED IN THE CARE OF CERTAIN ELDERLY FAMILY MEMBERS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Credit for expense of caring for certain elderly family members.** (1) There is a credit against the tax imposed by this chapter for qualified elderly care expenses paid by an individual for the care of a qualifying family member during the taxable year.

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(2) A qualifying family member is an individual who:

(a) is related to the taxpayer by blood or marriage;

(b) (i) is at least 70 years of age; or

(ii) is diagnosed by a physician as having senile dementia of the Alzheimer type; and

(c) has a family income of $15,000 or less for the taxable year.

(3) For purposes of this section, "family income" means, in the case of an individual who is not married, the adjusted gross income of the individual or, in the case of a married individual, the adjusted gross income of the individual and the individual's spouse.

(4) Qualified elderly care expenses include:

(a) payments by the taxpayer for home health agency services provided by an organization certified by the federal health care financing administration, homemaker services, adult day care, respite care, or health-care equipment and supplies:

(i) provided to the qualifying family member;

(ii) provided by an organization or individual not related to the taxpayer or the qualifying family member; and

(iii) not compensated for by insurance or otherwise;

(b) subject to the limitations in subsection (4)(a), payments by the taxpayer for nursing home care of an individual who is diagnosed by a physician as having senile dementia of the Alzheimer type.

(5) The percentage amount of credit allowable under this section is:

(a) for a taxpayer whose adjusted gross income does not exceed $25,000, 30% of qualified elderly care expenses; or

(b) for a taxpayer whose adjusted gross income exceeds $25,000, the greater of:

(i) 20% of qualified elderly care expenses; or

(ii) 30% of qualified elderly care expenses, less 1% for each $2,000 or fraction thereof by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

(6) The dollar amount of credit allowable under this section is:

(a) reduced by $1 for each dollar of the adjusted gross income over $50,000 for a taxpayer whose adjusted gross income exceeds $50,000;

(b) limited to $5,000 per qualifying family member in a taxable year and to $10,000 total for two or more family members in a taxable year;

(c) prorated among multiple taxpayers who each contribute to qualified elderly care expenses of the same qualified family member in a taxable year in the same proportion that their contributions bear to the total qualified

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elderly care expenses paid by those taxpayers for that qualified family member.

(7) A deduction or credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section. The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the taxpayer has no tax liability.

(8) In the case of a married individual filing a separate return, the percentage amount of credit under subsection (5) and the dollar amount of credit under subsection (6) are limited to one-half of the figures indicated in those subsections.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved April 8, 1989.

# CHAPTER NO. 470

[HB 645]

AN ACT REQUIRING PAWNBROKERS AND SECONDHAND DEALERS TO SURRENDER STOLEN PROPERTY TO PEACE OFFICERS UPON REQUEST; AND PROVIDING THAT PAWNBROKERS AND SECONDHAND DEALERS WHO DISPOSE OF STOLEN PROPERTY AFTER BEING ASKED TO SURRENDER THE PROPERTY COMMIT THE CRIMINAL OFFENSE OF THEFT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Theft by disposal of stolen property.** A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested him to hold the property for 30 days, as provided in [section 2], commits the offense of theft as defined in 45-6-301.

Section 2. **Pawnbroker to surrender stolen property.** When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to him or purchased by him is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days and shall surrender the property to the peace officer upon service of a search warrant by a peace officer pursuant to 31-1-401 through 31-1-406.

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Section 3. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45, chapter 6, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 46, chapter 5, part 2, and the provisions of Title 46, chapter 5, part 2, apply to [section 2].

Approved April 8, 1989.

# CHAPTER NO. 471

[HB 651]

AN ACT PROVIDING THAT COMPLIANCE WITH A NATIONAL ELECTRICAL SAFETY CODE STANDARD ESTABLISHES DUE CARE IN THE DEFENSE OF A NEGLIGENCE CLAIM ALLEGING A VIOLATION OF THAT STANDARD; AND AMENDING SECTION 69-4-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-4-201, MCA, is amended to read:

**"69-4-201. Application of national electrical safety code.** The national electrical safety code standards shall govern all future construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state shall be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code shall furnish construction standards and shall be enforced by the public service commission. *Proof of compliance with the requirements of an applicable national electrical safety code standard establishes due care in the defense of a negligence claim alleging a violation of that standard.*"

Approved April 8, 1989.

# CHAPTER NO. 472

[HB 688]

AN ACT TO ALLOW REGISTERED NURSES EMPLOYED BY FAMILY PLANNING CLINICS TO DISPENSE PREPACKAGED PRESCRIPTION CONTRACEPTIVES; AMENDING SECTIONS 37-2-104, 37-7-103, 50-31-103, 50-31-307, AND 50-32-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-2-104, MCA, is amended to read:

**"37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.** (1) Except as otherwise provided by this section, it is

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unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

*(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences if the dispensing is in accordance with:*

*(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and*

*(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy.*"

Section 2. Section 37-7-103, MCA, is amended to read:

"**37-7-103. Exemptions.** Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents such person from compounding or using drugs, medicines, chemicals, or poisons in his practice or prevents one duly licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons as he considers proper in the treatment of *the* patient;

(2) nothing *in this chapter* prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing *in this chapter* prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing *in this chapter* applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

*(5) nothing in this chapter prevents a registered nurse employed by a family planning clinic under contract with the department of health and*

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*environmental sciences from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs.*"

Section 3. Section 50-31-307, MCA, is amended to read:

"**50-31-307. Dispensing of prescription drugs.** (1) A drug intended for use by man *that falls in one of the categories in subsection (2) may be dispensed only*:

*(a)* upon a written prescription of a practitioner licensed by law to administer *the* drug;

*(b)* upon an oral prescription of *the* practitioner *that* is reduced promptly to writing and filed by the pharmacist; or

*(c)* by refilling any written or oral prescription if *the* refilling is authorized by the prescriber either in the original prescription or by oral order *that* is reduced promptly to writing and filed by the pharmacist.

*(2) A drug must be dispensed as provided in subsection (1) if the drug:*

*(a) is a habit-forming drug to which 50-31-306(1)(d) applies;*

*(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or*

*(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.*

*(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.*

*(4)* The act of dispensing a drug contrary to the provisions of this section *is considered* an act *that* results in a drug being misbranded while held for sale."

Section 4. Section 50-31-103, MCA, is amended to read:

"**50-31-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

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(2) "Beef patty mix" means "hamburger" or "ground beef" to which has been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(3) "Color" includes black, white, and intermediate grays.

(4) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or is exempted under the federal act.

(5) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or *50-31-307(2)(c)* or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(6) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(7) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(8) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other

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identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(9) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(11) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(12) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(13) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(14) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience

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based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) *a* color additive;

(iv) *a* substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(15) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(16) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are three grades of hamburger or ground beef:

(a) "economy hamburger" or "economy ground beef" may have a fat content no greater than the federal standard set forth in 9 C.F.R. 319.15;

(b) "regular hamburger" or "regular ground beef" may have a fat content no greater than 21%;

(c) "extra lean hamburger" or "extra lean ground beef" may have a fat content no greater than 18%.

(17) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(18) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(19) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(20) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(21) "New drug" means a drug, the composition of which is such that:

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(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(22) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(23) "Organic food" means food that conforms to the definition in 50-31-222.

(24) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(25) "Person" includes an individual, partnership, corporation, and association.

(26) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(27) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(28) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(29) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of such food in a package.

(30) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(31) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public with or without charge.

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(32) "State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104.

(33) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes."

Section 5. Section 50-32-205, MCA, is amended to read:

**"50-32-205. Nonprescription drugs not to be scheduled.** The board shall exclude any nonnarcotic drug from a schedule if *the* drug may, under the Federal Food, Drug, and Cosmetic Act and *50-31-307(2)(b)* of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 8, 1989.

# CHAPTER NO. 473

[HB 750]

AN ACT TO CREATE A STATE BUILDING ENERGY CONSERVATION PROGRAM; ESTABLISHING A STATE BUILDING ENERGY CONSERVATION PROGRAM ACCOUNT; ASSIGNING RESPONSIBILITY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR THE 1990-91 BIENNIUM IN THE AMOUNT OF $3 MILLION; STATUTORILY APPROPRIATING TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ALL MONEY RECEIVED UNDER THE PROGRAM; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

This bill requires a statement by the department of natural resources and conservation that the estimated annual energy savings to be derived from the installation of the energy saving improvements are expected to equal or exceed the annual debt service to be paid on the bonds issued to fund the improvements. In developing this savings statement, the department shall determine which energy improvements yield sufficient return on investment to be included in the financing package. In making this determination, the department should consider the projected savings of the improvement, the

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impact on project cash flow, the expected useful life of the improvement and the facility, the state's long-range plans for the facility, the potential impacts on the utility system, and any additional monetary and nonmonetary benefits to be derived from the improvement.

The department shall consult with the utility or utilities that serve the facilities on which the improvements are to be made. If a fuel switching measure is proposed, the department must demonstrate that the benefits to the state exceed the costs to the utility and its customers.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 8] may be cited as the "State Building Energy Conservation Act".

Section 2. **Definitions.** (1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of natural resources and conservation provided for in 2-15-3301.

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation of energy saving equipment, systems, and improvements in state-owned buildings, structures, and facilities.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of the energy conservation program.

(6) "State agency" means:

(a) each executive, legislative, or judicial branch department, office, or agency; and

(b) the university system.

Section 3. **Preparation of energy conservation program.** (1) Before June 30 of each odd-numbered year, state agencies shall submit to the department, on forms provided by the department, a list of any facilities operated by that agency that have a potential for energy savings, based on age, energy use, function, and condition of the building. Agencies may request assistance from the department to identify these facilities.

(2) Based on the criteria in subsection (1), the department shall select certain facilities for in-depth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) During the energy analyses, the department shall consult with the utilities that serve the selected facilities to discuss potential impacts on the utilities and their customers of making energy conservation improvements to these facilities.

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(4) Upon completion of the energy analyses, the department shall submit to the governor its findings and a prioritized list of projects recommended for funding under the energy conservation program. The department shall rank projects in terms of cost-effectiveness to the state.

(5) The department shall compile a report that must include the following:

(a) a listing of all requests submitted by state agencies;

(b) a summary of the department's review of agency requests;

(c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project;

(d) a description of measures taken by the department to address the issues that were raised in the consultation with the affected utilities; and

(e) if a fuel switching measure is proposed, an analysis of the costs to the affected utility and its customers and of the benefits to the state of the fuel switching measure.

(6) If a fuel switching measure is proposed, the department shall demonstrate through the analysis required by subsection (5)(e) that the benefits to the state exceed the costs to the utility and its customers.

(7) The department shall submit the report required by subsection (5) to the governor before September 1 of each even-numbered year.

Section 4. **Submission to the legislature.** During the first week of the regular legislative session, the governor shall submit to the legislature for its approval the proposed projects to be funded by the energy conservation program for the next biennium. In his recommendation, the governor shall include:

(1) the report prepared by the department;

(2) a description of the improvements to be financed;

(3) the estimated cost of each project and the total cost of the program; and

(4) the proposed method of financing the improvement. If energy conservation program bonds are proposed to be issued to finance the program improvements, the governor shall include within his report a written statement by the department that the estimated annual energy savings to be derived from the installation of the energy saving equipment or improvements, upon completion, are expected to equal or exceed the annual debt service to be paid on the energy conservation program bonds proposed to be issued to fund the costs of such equipment or improvements.

Section 5. **Duties of department.** In addition to the duties set forth in [section 3], the department is authorized to:

(1) analyze state utility data to identify high potential energy conservation projects;

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(2) perform comprehensive energy analyses on state-owned buildings, structures, and facilities, contracting with private engineers when necessary;

(3) to administratively transfer funds to the department of administration to procure design and construction of cost-effective energy improvements;

(4) train facility maintenance staff in energy saving techniques and maintenance of energy improvements, monitor energy conservation projects to ensure that cost savings are realized and are adequate to cover the debt service if bonds have been issued to fund the improvements.

Section 6. **Authority to issue energy conservation program bonds.** (1) When authorized by the vote of two-thirds of the members of each house of the legislature, at the request of the department, and pursuant to [sections 1 through 8], the board may issue and sell bonds or bond anticipation notes of the state in a manner it considers necessary and proper to finance the energy conservation program and to pay costs associated with the sale and issuance of the bonds. Bonds may be issued to provide funds for the payment or redemption of energy conservation building program bonds issued under this section.

(2) The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable on the bonds according to their terms.

Section 7. **Form — principal and interest — fiscal agent — deposit of proceeds.** (1) Each series of energy conservation program bonds may be issued by the board at the request of the department, in denominations and forms, whether payable to bearer or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at a rate or rates, maturing at times not exceeding 15 years from date of issue, subject to redemption at earlier times and prices and upon notice, and payable at the office of such fiscal agent of the state, as the board shall determine subject to the provisions of this section and [section 6].

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The bonds and any interest coupons must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(3) The board may employ a fiscal agent to assist in the performance of its duties under [sections 1 through 8].

(4) There is created an energy conservation program account within the state special revenue fund established in 17-2-102.

(5) All proceeds of bonds and notes issued under [section 6] must be deposited in the energy conservation program account, except that any premiums and accrued interest received must be deposited in the debt service fund established in 17-2-102.

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Section 8. **Use of energy conservation program account.** The energy conservation program account must be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the energy conservation program. The department may transfer all money authorized by the legislature for its administrative expenditures from the energy conservation program account to a special revenue fund. This money is statutorily appropriated as provided in 17-7-502.

Section 9. **Approval of projects.** Notwithstanding the provisions of [sections 3 and 4], the legislature approves the energy conservation projects listed below and the described amounts as the energy conservation program for the 1990-91 biennium:

| Facility | Cost |
|---|---|
| Montana State Hospital at Warm Springs | $801,146 |
| Montana State Hospital at Galen | 853,788 |
| Center for the Aged | 125,000 |
| School for the Deaf and Blind | 125,000 |
| Total | $1,904,934 |

Section 10. **Authorization of bonds — appropriation of proceeds.** (1) At the request of the department, the board may issue and sell bonds of the state in an aggregate principal amount not exceeding $3 million to provide money for the 1990-91 biennium energy conservation program. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account. Any premium and accrued interest must be deposited to the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds and to pay costs of the energy conservation program, including the funding of the 1990-91 biennium energy conservation projects approved by the legislature. For purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. Such proceeds must be available to the department and may be used for the purposes authorized in [sections 1 through 8] without further budgetary authorization.

Section 11. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

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(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90 4-215; 90-9-305; 90-15-103; section 13, House Bill No. 861, Laws of 1985; section 1, Chapter 454, Laws of 1987; *and [section 8]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 12. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 90, chapter 4, and the provisions of Title 90, chapter 4, apply to [sections 1 through 8].

Section 13. **Coordination instruction.** If House Bill No. 563 is not passed and approved, [this act] is void.

Section 14. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Requirements for approval of state debt — nonseverability.** Because [section 10] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 10]. If [section 10] is not approved by the required vote, [this act] is void.

Section 16. **Effective date.** [This act] is effective on passage and approval.

Approved April 8, 1989.

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# CHAPTER NO. 474

[HB 87]

AN ACT TO AMEND CERTAIN DEFINITIONS WITHIN THE CHILD ABUSE, NEGLECT, AND DEPENDENCY LAW; AMENDING SECTION 41-3-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 41-3-102, MCA, is amended to read:

**"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) "*Abused* or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed *sexual abuse or exploitation of the child*;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(5) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be

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most likely to be effective in ameliorating or correcting all such conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of such treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(6) "Threatened harm *to a child's health or welfare*" means *substantial* risk of harm *to the child's health or welfare.*

(7) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; *a staff person providing care in a day-care facility;* an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function *and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.*

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(11) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(12) "Department" means the department of family services provided for in 2-15-2401.

(13) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(14) "Social worker" means an employee of the department of family services whose duties generally involve the provision of either child or adult protective services, or both.

*(15) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.*

*(16) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date — applicability.** [This act] is effective on passage and approval and applies to proceedings begun on or after that date.

Approved April 8, 1989.

## CHAPTER NO. 475

[HB 422]

AN ACT TO AMEND THE LIVING WILL ACT TO ALLOW A DECLARANT TO DIRECT EMERGENCY MEDICAL SERVICES PERSONNEL TO WITHHOLD LIFE-SUSTAINING PROCEDURES; TO LIMIT THE EFFECT OF A REVOCATION OF A DECLARATION COMMUNICATED TO SOMEONE OTHER THAN A PHYSICIAN OR OTHER HEALTH CARE PROVIDER; GRANTING IMMUNITY TO EMERGENCY MEDICAL SERVICES PERSONNEL; AMENDING SECTIONS 50-9-102, 50-9-104, AND 50-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 4] grants the department of health and environmental sciences authority to adopt

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rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-9-102, MCA, is amended to read:

**"50-9-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

*(2) "Board" means the Montana state board of medical examiners.*

*(3)* "Declaration" means a document executed in accordance with the requirements of 50-9-103.

*(4) "Department" means the department of health and environmental sciences.*

*(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their profession.*

*(6)* "Health care provider" means a person who is licensed or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

*(7)* "Life-sustaining procedure" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process.

*(8) "Living will protocol" means a locally developed, community-wide method or a standardized, state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining procedures from a qualified patient under 50-9-202 by emergency medical service personnel.*

*(9)* "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

*(10)* "Qualified patient" means a patient who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

*(11) "Reliable documentation" means a standardized, state-wide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical*

*services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.*

*(12)* "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of the attending physician, result in death within a relatively short time."

Section 2. Section 50-9-104, MCA, is amended to read:

**"50-9-104. Revocation of declaration.** (1) A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his intent to revoke, without regard to mental or physical condition. A revocation is effective only as to the attending physician or any health care provider acting under the guidance of that physician upon communication to the physician or health care provider by the declarant or by another to whom the revocation was communicated. *A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician at the earliest opportunity. A revocation communicated to a person other than the attending physician, emergency medical services personnel, or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining procedures.*

(2) The attending physician or health care provider shall make the revocation a part of the declarant's medical record."

Section 3. Section 50-9-204, MCA, is amended to read:

**"50-9-204. Immunities.** (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

*(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures under the direction of or with the authorization of a physician or who on receipt of reliable documentation follow a living will protocol;*

*(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and*

*(e)* a health care facility in which withholding or withdrawal occurs.

(2) A physician is not subject to civil or criminal liability for actions under this chapter that are in accord with reasonable medical standards."

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Section 4. **Authority to adopt rules.** The department may adopt rules to implement this chapter.

Section 5. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 50, chapter 9, and the provisions of Title 50, chapter 9, apply to [section 4].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 8, 1989.

# CHAPTER NO. 476

[HB 425]

AN ACT TO MODIFY THE DRIVING UNDER THE INFLUENCE STATUTES; TO KEEP A DRIVER'S LICENSE SUSPENSION FOR A SECOND OR SUBSEQUENT OFFENSE IN EFFECT UNTIL AN ALCOHOL INFORMATION COURSE AND TREATMENT, IF TREATMENT IS ALSO ORDERED, IS COMPLETED; TO PROVIDE THAT, FOR THE PURPOSE OF CALCULATING THE NUMBER OF CONVICTIONS FOR PURPOSES OF THE DUI PENALTY SECTION, A CONVICTION OF A PER SE OFFENSE CONSTITUTES A CONVICTION UNDER THE DUI OFFENSE SECTION; TO CLARIFY WHEN A DUI OFFENDER IS CONSIDERED TO HAVE A PREVIOUS CONVICTION; PROVIDING THAT DUI PRIOR CONVICTION RECORDS MAY NOT BE EXPUNGED; RESTRICTING ACCESS TO THE RECORDS; AND AMENDING SECTIONS 61-5-208 AND 61-8-714, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke a driver's license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as permitted under *subsection (2) of this section*, 61-5-207, 61-5-212, 61-6-123, and 61-11-211.

(2) Any person whose license, commercial vehicle operator's endorsement, or privilege to drive a motor vehicle on the public highways has been suspended or revoked is not entitled to have *the* license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of *the* revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not then issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in this state. When any person is convicted or forfeits bail

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or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination thereof or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the license, including any commercial vehicle operator's endorsement, or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license, commercial vehicle operator's endorsement, or driving privilege of the person for a period of 1 year, *except that if the 1-year period passes and the person has not completed an alcohol information course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both are completed.*

(3) The period for all revocations made mandatory by 61-5-205 shall be 1 year except as provided in subsection (2) of this section.

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or forfeiture of bail."

Section 2. Section 61-8-714, MCA, is amended to read:

**"61-8-714. Penalty for driving under the influence of alcohol or drugs.** (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(2) On a second conviction, he shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Three days of the jail sentence may not be suspended unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being.

(3) On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year, *and by* a fine of not less than $500 or more than $1,000. Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of institutions, which may, *in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor,* include alcohol or drug treatment, or both. *On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course*

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*at an alcohol treatment program approved by the department of institutions, which must include alcohol or drug treatment or both.* Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. *As long as the alcohol information course and treatment program are approved as provided in this subsection, the defendant may attend the information course and treatment program of his choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to his alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.*

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, *conviction for a violation of* a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of this section if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction hereunder, then *all records and data relating to the prior conviction are confidential criminal justice information as defined in 44-5-103 and public access to the information may only be obtained by district court order upon good cause shown.*

*(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.*"

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 8, 1989.

# CHAPTER NO. 477

[HB 495]

AN ACT CLARIFYING THAT FOR THE OFFENSE OF UNLAWFUL POSSESSION OF AN INTOXICATING SUBSTANCE BY A PERSON UNDER 21 YEARS OF AGE TO BE COMMITTED, THE PERSON NEED NOT BE IN POSSESSION OF THE SUBSTANCE AT THE TIME OF ARREST; PROVIDING THAT CONSUMPTION OF THE SUBSTANCE CONSTITUTES POSSESSION FOR A PERSON UNDER THE AGE OF 19; AND AMENDING SECTION 45-5-624, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-624, MCA, is amended to read:

**"45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.** (1) *(a)* A person under the

age of *19* years commits the offense of possession of an intoxicating substance if he knowingly *consumes or* has in his possession an intoxicating substance. *The person need not be consuming or in possession of the intoxicating substance at the time of his arrest to violate this subsection.*

*(b)* A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense *if he consumes or gains possession of the beverage because it was lawfully supplied to him under 16-6-305 or* when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall:

(a) be fined not to exceed $50;

(b) be ordered to complete and, if financially able, pay all costs of his participation in a community-based substance abuse information course;

(c) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred; or

(d) be sentenced to any combination of these penalties.

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. *The* youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both."

Approved April 8, 1989.

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# CHAPTER NO. 478

[HB 544]

AN ACT TO EXPAND THE SCOPE OF APPEAL BY THE STATE BY ALLOWING FOR APPEAL FROM JUDGMENTS THAT ARE CONTRARY TO LAW; AMENDING SECTION 46-20-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-20-103, MCA, is amended to read:

**"46-20-103. Scope of appeal by state.** (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;

(b) modifying or changing the verdict as provided in 46-16-702(3)(c);

(c) granting a new trial;

(d) quashing an arrest or search warrant;

(e) suppressing evidence;

(f) suppressing a confession or admission;

(g) granting or denying change of venue; *or*

*(h) imposing a sentence that is contrary to law.*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Applicability.** [This act] applies to all sentencing proceedings begun after [the effective date of this act].

Approved April 8, 1989.

# CHAPTER NO. 479

[HB 561]

AN ACT TO PROVIDE THAT THE TENURE OF A TEACHER WITH A SCHOOL DISTRICT IS NOT IMPAIRED UPON TERMINATION OF THE TEACHER'S SERVICES WITH THE DISTRICT IF CERTAIN CONDITIONS EXIST; AND AMENDING SECTION 20-4-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-4-203, MCA, is amended to read:

**"20-4-203. Teacher tenure.** *(1)* Whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year

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of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher *is considered* to be reelected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with *the* teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

*(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:*

*(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and*

*(b) continued employment rights are provided for in a collectively bargained contract of the district.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 8, 1989.

# CHAPTER NO. 480

[HB 593]

AN ACT REQUIRING COUNSELING FOR A PERSON CONVICTED OF DOMESTIC ABUSE FOR THE FIRST OR SECOND TIME; AND AMENDING SECTION 45-5-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Domestic abuse.** (1) A person commits the offense of domestic abuse if he:

(a) purposely or knowingly causes bodily injury to a family member or household member; or

(b) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or household member, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of this section and 46-6-401, "family member or household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed $500 or be imprisoned in the county jail not

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to exceed 6 months, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

*(4) (a) A person convicted of domestic abuse for the first or second time shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:*

*(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;*

*(ii) with a professional person as defined in 53-21-102; or*

*(iii) in a specialized domestic violence intervention program.*

*(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines there is no available treatment program directed to the violent conduct of the convicted person.*

*(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court."*

Approved April 8, 1989.

# CHAPTER NO. 481

[HB 668]

THE GOVERNMENT HEALTH CARE INFORMATION ACT; SPECIFYING THE CIRCUMSTANCES UNDER WHICH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND LOCAL HEALTH DEPARTMENTS MAY RELEASE HEALTH CARE INFORMATION FROM THEIR RECORDS; AND PROVIDING A PENALTY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Government Health Care Information Act".

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about

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an individual received pursuant to state law or rules relating to communicable disease. The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

Section 3. **Confidentiality of health care information.** Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in [this act].

Section 4. **Secondary release of health care information.** Information released pursuant to [section 3] may not be released by the person or entity it is released to unless the release conforms to the requirements of [section 3].

Section 5. **Judicial, legislative, and administrative proceedings — testimony.** (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

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(2) Subsection (1) does not apply if the health care information is to be released pursuant to [section 3(7)].

Section 6. **Penalty.** A person who knowingly violates the provisions of [this act] is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 50.

Approved April 8, 1989.

# CHAPTER NO. 482

[HB 204]

AN ACT ALLOWING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES OR A COUNTY A LIEN ON, RATHER THAN A SUBROGATION INTEREST IN, A THIRD-PARTY RECOVERY BY A RECIPIENT WHOSE MEDICAL EXPENSES WERE PAID BY THE DEPARTMENT OR COUNTY; REVISING PROVISIONS RELATING TO NOTICE TO THE DEPARTMENT OR COUNTY; PROVIDING FOR LIABILITY FOR FAILURE TO SATISFY THE LIEN; AMENDING SECTIONS 53-2-611, 53-2-612, AND 53-6-143, MCA; REPEALING SECTION 53-3-315, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-2-612, MCA, is amended to read:

**"53-2-612. Lien of department or county upon third-party recoveries.** (1) *Upon notice by the department, a county, or the recipient to a third party or his insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or his insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability.*

(2) The department *or county* may, in the name of the recipient on whose behalf medical *assistance has* been paid *by the department or county*, commence and prosecute to final conclusion any action which may be necessary to recover from a third party *or his insurer* compensation or damages for medical *assistance paid by the department or county on behalf*

*of the recipient.* This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in his own name in accordance with the provisions of this section.

(3) *(a) The lien:*

*(i) applies to all money paid by a third party or his insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and*

*(ii) is subordinate to the lien of an attorney under 37-61-420.*

*(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or his insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.*

*(c)* From the amount collected *by the department, county, or recipient* from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be *first* deducted *and paid.* Unless the department *or county* and the recipient agree to a different settlement, the amount previously paid as medical *assistance* by the department *or county,* less a pro rata share of attorney fees and costs, must be deducted next and paid to the department *or county.* The remainder, *if any,* must be paid to the recipient.

*(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien.*

(4) *(a)* A recipient of medical *assistance* or his legal representative shall notify the department *or county* by certified letter *within 30 days* if the recipient or his legal representative asserts a claim against a third party or his insurer for damages or compensation for *a personal* injury, *disease, illness, or disability* for which the department *or county* paid medical *assistance* in whole or in part *or for which the recipient has applied for medical assistance.* The notice must be mailed to the director of the department *or the director of the county department that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or his insurer.*

*(b) The notice* must contain the following information:

*(i)* the name and address of the recipient *and his legal representative, if any;*

*(ii)* the name *and address* of the third party alleged to be liable to the recipient;

*(iii)* the name and address of any known insurer of the third party; and

*(iv)* the judicial district and docket number of any action filed.

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*(c) A recipient or his legal representative, who has received actual notice that the department or county has paid medical assistance, is liable to the department or county for the amount it is entitled to receive under this section if:*

*(i) the recipient or his legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or his insurer; and*

*(ii) a third party or his insurer that did not receive notice from the department or county as provided for in subsection (5)(b) pays the recipient or his legal representative without satisfying any lien of the department or county.*

*(5) (a) If a third party or his insurer that has received notice of the department's or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department or county, the third party or his insurer is liable to the department or county for the amount the department or county is entitled to receive under this section.*

*(b) For the purposes of subsection (5)(a), a third party or his insurer has been given notice if:*

*(i) the department or county mails, by certified mail, to the third party or his insurer:*

*(A) a statement of the medical assistance paid or which may be paid by the department or county on behalf of the recipient; and*

*(B) a claim for reimbursement;*

*(ii) the recipient or his legal representative mails, by certified mail, to the third party or his insurer:*

*(A) a copy of the notice required by subsection (4)(a); or*

*(B) a statement stating that the recipient has applied for or has received medical assistance from the department or county in connection with the same claim; or*

*(iii) the recipient or his legal representative has commenced an action against the third party or his insurer for damages or compensation for personal injury, disease, illness, or disability for which the department or county has paid or may pay medical assistance, in whole or in part, and the department or county files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:*

*(A) medical assistance in a stated amount has been paid by the department or county on behalf of the recipient; or*

*(B) medical assistance may be paid on behalf of the recipient.*

(6) As used in this section, *the following definitions apply:*

*(a) "County" means a county department of welfare in a county that has not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8.*

*(b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or his insurer.*

*(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.*

*(d)* "*Third* party" means an individual, institution, corporation, or public or private agency *that* is or may be liable to pay all or part of the cost of *medical treatment and medical-related services for personal* injury, disease, *illness,* or disability of a recipient of medical *assistance* from the *department* or *a* county and includes but is not limited to insurers, health service organizations, and *parties* liable *or who may be liable* in tort."

Section 2. Section 53-6-143, MCA, is amended to read:

**"53-6-143. Limitations on liens and recoveries.** *(1) An applicant for or recipient of assistance may not be* required to execute an agreement *creating a* lien on his real property.

*(2) A* lien may be imposed against the *real or personal* property of an individual prior to his death *for recovery* of medical assistance paid or to be paid on his behalf *under this chapter only:*

*(a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient; or*

*(b) on a third-party recovery as provided in 53-2-612.*

*(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:*

*(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65; or*

*(ii) as provided in 53-2-612.*

*(b) The department may recover under 53-2-611 only:*

*(i) after the death of the recipient's surviving spouse, if any; and*

*(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled.*

*(4)* Recoveries *must* be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this section are hereby extended to provide for the recovery of all medical assistance paid under this part and likewise to all medical aid to the aged assistance paid by the department of social and rehabilitation services during the period of time July 1, 1965, through June 30, 1967."

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Section 3. Section 53-2-611, MCA, is amended to read:

"**53-2-611. Recovery from recipient's estate.** (1) Upon the death of any recipient of *medical assistance under Title 53, chapter 6, part 1*, the department shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this title, separately stating the amount of all assistance paid *on or* after July 1, 1953. *The department's claim is subject to the limitations specified in 53-6-143(3).*

*(2)* All *money* recovered *under this section* from any source *must* be distributed to the county and to the general fund of the state of Montana *according to the county's or state's* interests. If the federal law requires, the federal government *is* entitled to a share of any amounts collected *under this section* in proportion to the amounts *that* it has contributed to the grants recovered. *The* amount due the United States *must* be promptly paid by the department to the United States government."

Section 4. **Repealer.** Section 53-3-315, MCA, is repealed.

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date — applicability — retroactive applicability date.** (1) [This act] is effective on passage and approval.

(2) [Sections 1 and 4] apply to recoveries for personal injury that occurs, disease or illness that is diagnosed, or disability that commences on or after [the effective date of this act].

(3) [Sections 2 and 3] apply retroactively, within the meaning of 1-2-109.

Approved April 10, 1989.

# CHAPTER NO. 483

[HB 258]

AN ACT CREATING A BOARD OF PASSENGER TRAMWAY SAFETY; TRANSFERRING TO THE NEW BOARD THE POWERS, DUTIES, AND FUNCTIONS OF THE DEPARTMENT OF COMMERCE RELATING TO TRAMWAYS; PROVIDING FOR ANNUAL TRAMWAY REGISTRATION CERTIFICATES; PROVIDING LIABILITY LIMITS; AMENDING SECTIONS 23-2-701, 23-2-702, 23-2-711 THROUGH 23-2-715, 23-2-721 THROUGH 23-2-725, AND 23-2-734, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Board of passenger tramway safety.** (1) There is a board of passenger tramway safety.

(2) The board consists of seven members appointed by the governor. Members of the board shall serve staggered 4-year terms, commencing on

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January 1 of each year of appointment. A member who has served two successive complete terms is not eligible for reappointment for 1 year. Upon notice and hearing, the governor may remove a member for neglect of duty or other just cause. A vacancy on the board must be filled in the same manner as the original appointment and only for the unexpired portion of the term.

(3) The members are:

(a) two skiers representative of the public;

(b) one licensed attorney who is a member of the skiing public;

(c) one employee from the United States forest service working in the field of passenger tramway safety;

(d) two persons involved with the operation of active ski areas; and

(e) one person who is a Montana-licensed professional engineer.

(4) Board members shall receive compensation for performance of board duties as provided in 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

Section 2. **Liability limits.** The board, individual board members, technical advisers appointed by the board, and any independent contractor with whom the board contracts must be provided all protections of governmental immunity granted to public employees by 2-9-305, including but not limited to the provision of legal defense, the payment of court costs, and the payment of judgments and settlements. These protections are provided only with regard to actions brought because of acts or omissions committed by such persons in the course of official tramway duties.

Section 3. Section 23-2-701, MCA, is amended to read:

**"23-2-701. Policy of state.** In order to safeguard the life, health, property, and welfare of the citizens of Montana while using passenger tramways, as defined in 23-2-702, it shall be the policy of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design, construction, and operation of passenger tramways but not from the hazards inherent in the sports of mountaineering, skiing, and hiking or from the hazards of the area utilized by the skier or other sportsman and that periodic inspections be required of passenger tramways with a view to assuring that each one of them meets the rules set forth by the *board*. The state, through the *board*, shall register all passenger tramways in the state, establish reasonable standards of design, construction, and operational practices, and cause to be made such inspections as may be necessary in carrying this policy into effect."

Section 4. Section 23-2-702, MCA, is amended to read:

**"23-2-702. Definitions.** As used in this part, the following definitions apply:

(1) "Area" means the area, terrain, or ski slopes served by a passenger tramway.

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*(2) "Board" means the board of passenger tramway safety provided for in [section 1].*

(3) "Industry" means the passenger tramway business activities of all those persons in the state who own, manage, or direct the operation of passenger tramways.

(4) "Operator" means a person, including any political subdivision or instrumentality thereof, who owns, manages, or directs the operation of a passenger tramway.

(5) "Passenger tramway" means a device used to transport passengers by means of any of the following:

(a) two-car aerial passenger tramway, a device used to transport passengers in two open or enclosed cars attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(b) multicar aerial passenger tramway, a device used to transport passengers in several open or enclosed cars or carrying device attached to and suspended from a moving wire rope or attached to a moving wire rope and supported on a standing wire rope or similar devices;

(c) skimobile, a device in which a passenger car running on steel or wooden tracks is attached to and pulled by a steel cable or similar devices;

(d) chair lift, a type of transportation on which passengers are carried on chairs suspended in the air and attached to a moving cable, chain, or link belt supported by trestles or towers with one or more spans or similar devices;

(e) a J-bar, T-bar, or platterpull, so-called, and similar types of devices or means of transportation which pull skiers riding on skis by means of an attachment to a main overhead cable supported by trestles or towers with one or more spans;

(f) rope tow, a type of transportation which pulls the skier, riding on skis as the skier grasps the rope or wire rope manually, or similar devices."

Section 5. Section 23-2-711, MCA, is amended to read:

**"23-2-711. Registration of tramways required.** No passenger tramway shall be operated in this state unless it has been and continues to be registered with the *board*, provided that the initial application for the registration of a passenger tramway shall permit the operator to operate such passenger tramway until final action on the application shall have been taken by the *board*. If an operator files an application with the *board* for the registration of a passenger tramway, which at that time is registered, then the operator may continue the operation of such passenger tramway under the existing registration until the *board* takes final action on the pending application and shall have:

(1) issued a certificate to the operator; or

(2) given written notice to the operator that the passenger tramway has not qualified for certification."

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Section 6. Section 23-2-712, MCA, is amended to read:

**"23-2-712. Application for registration.** Each year on or before October 1, every operator of a passenger tramway shall apply to the *board*, on forms prepared by it, for registration of the passenger tramways owned, operated, or managed by him. The application shall contain such information as the *board* may reasonably require in order for it to determine whether the passenger tramways sought to be registered comply with the intent of this part as specified in 23-2-701 and the rules promulgated by the *board* pursuant to 23-2-721."

Section 7. Section 23-2-713, MCA, is amended to read:

**"23-2-713. Issuance of certificates.** (1) The *board* shall issue to the applying operator *annual* registration certificates for each passenger tramway owned, managed, or operated by such operator when it is satisfied:

(a) that the facts stated in the application are sufficient to enable the *board* to fulfill its duties under this part; and

(b) that each such passenger tramway sought to be registered complies with the rules of the *board* promulgated pursuant to 23-2-721.

(2) In order to satisfy itself that the conditions described in subsections (1)(a) and (1)(b) of this section have been fulfilled, the *board* may cause to be made such inspections described in 23-2-722 as it may reasonably deem necessary.

(3) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon the receipt of such supplemental application, the *board* shall proceed immediately to initiate proceedings leading to the registration or rejection of registration of such passenger tramway pursuant to the provisions of this part.

(4) Each *annual* registration shall expire on September 30 of the year next following the year of issuance.

(5) Each operator shall cause the registration certificate for each passenger tramway registered to be displayed conspicuously at the place where passengers load."

Section 8. Section 23-2-714, MCA, is amended to read:

**"23-2-714. Fees.** (1) The application for *annual* registration or supplemental application shall be accompanied by such annual fees as the *board* may *by rule* fix from year to year, not to exceed the following annual fees:

(a) passenger tramways described in subsections (5)(e) and (5)(f) of 23-2-702, $25 each;

(b) passenger tramways described in subsections (5)(c) and (5)(d) of 23-2-702, $50 each;

(c) passenger tramways described in subsections (5)(a) and (5)(b) of 23-2-702, $100 each.

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(2) All fees collected by the *board* shall be deposited in the state special revenue fund."

Section 9. Section 23-2-715, MCA, is amended to read:

**"23-2-715. Assessment on passenger tramway receipts.** (1) The *board* is hereby authorized to impose an assessment of *up to* ¼ of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of $100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year to July 1 of the following year. The assessments shall be collected by the department of revenue and remitted to the state special revenue fund by December 31 of each year.

(2) All proceeds of the gross receipts assessment and the fees collected under 23-2-714 shall be used only to support the duties of the *board* set forth in this part."

Section 10. Section 23-2-721, MCA, is amended to read:

**"23-2-721. Additional powers and duties of board.** In addition to all other powers and duties conferred and imposed upon the *board* by this part, the *board* shall:

(1) adopt reasonable rules relating to public safety in the design, construction, and operation of passenger tramways but which may not relate or pertain to an area served by a passenger tramway. In adopting such rules the *board* shall:

(a) use as a guideline the standards contained in "The American National Standards for Passenger Tramways—*Aerial Tramways and Lifts, Surface Lifts, and Tows—Safety Requirements*", ANSI B 77.1—*1982*, as amended from time to time, or equivalent and as amended or supplemented from time to time by the *board*;

(b) hold hearings and take in all evidence relating to the adoption of rules;

*(c)* supply to each operator a copy of its rules and each amendment thereto or revision thereof;

*(d)* avoid discrimination in application of the rules to operators of passenger tramways;

*(2) The board may:*

*(a)* hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the *board*, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry;

*(b)* approve, deny, revoke, and renew the registrations provided for in this part;

*(c)* cause the prosecution and enjoinder of all persons violating the provisions of this part and incur the necessary expenses thereof;

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*(d)* prescribe the duties of such personnel as the *board* considers necessary."

Section 11. Section 23-2-722, MCA, is amended to read:

**"23-2-722. Inspection of tramways.** The *board* may cause to be made such inspection of the design, construction, operation, and maintenance of passenger tramways as the *board* may reasonably require. The *board* may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the *board's* rules exists or a condition in passenger tramway *design,* construction, operation, or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the *board* for appropriate investigation and order."

Section 12. Section 23-2-723, MCA, is amended to read:

**"23-2-723. Order for corrective action and compliance.** If, after investigation, the *board* finds that a violation of this part or any of its rules exists or that there is a condition in passenger tramway *design,* construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings *and* the corrective action to be taken and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by certified mail."

Section 13. Section 23-2-724, MCA, is amended to read:

**"23-2-724. Remedies to enforce compliance.** If any operator fails to comply with a legal order or rule of the *board,* the *board,* at its election, may:

(1) suspend the registration of the affected passenger tramway until the operator complies therewith; or

(2) bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located to compel compliance therewith. In such proceedings the *board* shall not be required to post bond."

Section 14. Section 23-2-725, MCA, is amended to read:

**"23-2-725. Judicial review.** Any order of the *board* adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases."

Section 15. Section 23-2-734, MCA, is amended to read:

**"23-2-734. Duties of operator with respect to passenger tramways.** A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the *board.* However,

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nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain, and repair a passenger tramway."

Section 16. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 17. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 23, chapter 2, part 7, and the provisions of Title 23, chapter 2, part 7, apply to [section 2].

Section 18. **Coordination instruction.** If [___Bill No.___ (LC 0522)] is passed and approved, [___Bill No.___ (LC 0521)] is void.

Section 19. **Effective date.** [This act] is effective January 1, 1990.

Approved April 10, 1989.

# CHAPTER NO. 484

[HB 437]

AN ACT REVISING THE LAWS GOVERNING THE PRACTICE OF PODIATRY BY DEFINING THE SCOPE OF PODIATRY PRACTICE; AND AMENDING SECTIONS 37-6-101 AND 37-6-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-6-101, MCA, is amended to read:

**"37-6-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Podiatry" means the diagnosis and treatment of ailments of the human *functional* foot *as provided in 37-6-102.*

(2) "Podiatrist" means a physician or surgeon of the foot, licensed to *diagnose and* treat ailments of the *human functional* foot.

(3) "Board" means the board of medical examiners provided for in 2-15-1841.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18."

Section 2. Section 37-6-102, MCA, is amended to read:

**"37-6-102. Scope of practice.** *(1)* A podiatrist may *diagnose and* treat ailments of the human *functional* foot *by all systems and means. The functional foot is the anatomical foot and any muscle, tendon, ligament, or*

*other soft tissue structure that is directly attached to the anatomical foot and that impacts on or affects the foot or foot function.*

*(2) A podiatrist may not* administer any anesthetic other than a local anesthetic."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 10, 1989.

# CHAPTER NO. 485

[HB 691]

AN ACT PERMITTING THE GOVERNOR TO DESIGNATE THE STATE GOVERNMENT DEPARTMENT RESPONSIBLE FOR ADMINISTERING FEDERAL SURPLUS PROPERTY; AMENDING SECTIONS 2-15-1011, 18-5-201, AND 18-5-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1011, MCA, is amended to read:

**"2-15-1011. State agency for surplus property.** There is a Montana state agency for *federal* surplus property *that is* administered by *a* department *designated by the governor.* The director of the department may prescribe the duties of personnel needed to carry out the duties of Title 18, chapter 5, part 2."

Section 2. Section 18-5-201, MCA, is amended to read:

**"18-5-201. Administration of the state agency for surplus property.** There is a Montana state agency for *federal* surplus property *that is* administered by *a* department *designated by the governor.* The director of the department may prescribe the duties of personnel needed to carry out the duties *under this part.*"

Section 3. Section 18-5-205, MCA, is amended to read:

**"18-5-205. Officers or employees authorized to secure transfer of surplus property.** *(1) Notwithstanding any* provision of law to the contrary, the governing board or, *if* there *is* none, the executive head of *a* state department or agency or of *a* city, county, school district, or other political subdivision may by order or resolution confer upon *an* officer or employee continuing authority to:

*(a)* secure the transfer to it of surplus property under this part through the department *designated in 18-5-201* under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended; and

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*(b)* obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of *the* transfers.

*(2)* The authority conferred upon *an* officer or employee by *an* order or resolution *remains* in effect until the order or resolution is revoked and written notice of *the* revocation *has* been received by the department."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved April 8, 1989.

# CHAPTER NO. 486

[HB 295]

AN ACT CLARIFYING THAT A PERSON INVOLVED IN A MOTOR VEHICLE ACCIDENT OR HIS LEGAL REPRESENTATIVE MAY EXAMINE, WITHOUT OBTAINING A COURT ORDER, ALL ACCIDENT REPORTS AND SUPPLEMENTAL INFORMATION CONCERNING THE ACCIDENT THAT ARE PREPARED AND FILED BY THE DEPARTMENT OF JUSTICE PURSUANT TO THE UNIFORM ACCIDENT REPORTING ACT; AND AMENDING SECTIONS 61-7-109 AND 61-7-114, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-7-109, MCA, is amended to read:

**"61-7-109. Written reports of accidents — additional information — form of report.** (1) The operator of any motor vehicle which is in any manner involved in an accident within this state in which any person is killed or injured or in which damage to the property of any one person in excess of $400 is sustained shall, within 10 days after such accident, report the matter in writing to the department unless the accident was investigated and reported by a law enforcement officer as provided in subsection (3).

(2) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) Every law enforcement officer who in the regular course of duty investigates a motor vehicle accident in which any person is killed or injured or in which damage to the property of any person exceeds $400, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the department.

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(4) The form of the accident report required under this section shall contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in this part.

*(5) A report required by subsection (1) or (2) may not be used as evidence in any trial, civil or criminal, arising out of an accident."*

Section 2. Section 61-7-114, MCA, is amended to read:

**"61-7-114. Accident reports confidential.** (1) All required accident reports and supplemental reports shall be without prejudice to the individual reporting and shall be for the confidential use of the department or other state agencies having use for the records for accident prevention purposes or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. *The* department may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at *the* accident.

(2) *Except as provided in this section, all* accident reports and supplemental information filed as required by this part shall be confidential and not open to general public inspection, nor shall copying of lists of such reports be permitted. *The* report and supplemental information filed by law enforcement personnel, as required by this part, may be examined *and copied, without obtaining a court order,* by any person named in *the* report or reports or by any driver, passenger, or pedestrian involved in the accident or by his representative designated in writing, *or by a party to a civil action arising from the accident,* or if *the* person *is* deceased, by his executor or administrator or by the attorney representing *his* executor or administrator."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 11, 1989.

# CHAPTER NO. 487

[HB 318]

AN ACT TO INCREASE THE MAXIMUM PENALTY FOR KNOWINGLY TRANSPORTING, INTERRING, OR DISPOSING OF A DEAD BODY WITHOUT A PERMIT OR FOR REFUSING TO PROVIDE INFORMATION REQUIRED BY LAW; AND AMENDING SECTION 50-15-114, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-15-114, MCA, is amended to read:

**"50-15-114. Unlawful acts and penalties.** (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the department.

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(2) A person shall be fined not more than $1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that *the* information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than *$500*, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 11, 1989.

# CHAPTER NO. 488

[HB 332]

AN ACT TO GENERALLY REVISE AND CLARIFY THE AUTHORITY OF THE BOARD OF TRUSTEES OF EACH COMMUNITY COLLEGE RELATING TO COLLEGE PROPERTY AND FINANCE; AND AMENDING SECTIONS 20-15-301 AND 20-15-404, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-15-301, MCA, is amended to read:

**"20-15-301. Sources of financing for and types of capital expenditures.** (1) The board of trustees of any community college district *may*:

(a) *purchase, lease,* build, enlarge, alter, *or* repair school buildings and dormitories;

(b) furnish and equip buildings;

(c) purchase sites for buildings;

(d) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of chapter *9, part 4,* of this title.

(2) The board of trustees of a community college district *may borrow money* for the purposes of this section and repay *the* obligations from the various revenues of the college."

Section 2. Section 20-15-404, MCA, is amended to read:

**"20-15-404. Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall:

(1) adhere to the teachers' retirement provisions of Title 19, chapter 4, as amended;

(2) adhere to the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212, as amended;

(3) adhere to the school property provisions of *20-6-604,* 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636, as amended;

(4) adhere to the adult education provisions of 20-7-701 through 20-7-713, as amended;

(5) adhere to the administration of finances provisions of 20-9-115, 20-9-134, subsections (2), (3), (4), and (5) of 20-9-161, 20-9-163, 20-9-165, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221 through 20-9-224, *and 20-9-512,* as amended;

(6) adhere to the school bond provisions of 20-9-401 through 20-9-412, 20-9-421 through 20-9-446, 20-9-451 through 20-9-456, and 20-9-461 through 20-9-465, as amended;

(7) adhere to the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511, as amended;

(8) adhere to the educational cooperative agreements provisions of 20-9-701 through 20-9-704, as amended;

(9) adhere to the school elections provisions of Title 20, chapter 20, as amended;

(10) adhere to the students' rights provisions of 20-25-511 through 20-25-516, as amended; and

(11) adhere to the health provisions of 50-1-206."

Section 3. **General fund cash reserve.** At the end of each school fiscal year the board of trustees of a community college district may designate a portion of the general fund end-of-the-year cash balance as a cash

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reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. The amount of the general fund cash balance that is earmarked as cash reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 20, chapter 15, part 3, and the provisions of Title 20 apply to [section 3].

Approved April 11, 1989.

# CHAPTER NO. 489

[HB 349]

AN ACT DESIGNATING THE SEIZING LAW ENFORCEMENT AGENCY AS THE ENTITY THAT HOLDS AND DISPOSES OF SEIZED PROPERTY THAT WAS USED TO VIOLATE DRUG LAWS; PROHIBITING CERTAIN PERSONS FROM PURCHASING THE PROPERTY; AND AMENDING SECTIONS 44-12-103 AND 44-12-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-12-103, MCA, is amended to read:

"**44-12-103. When property may be seized.** (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the *offices of his law enforcement agency*, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

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(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1."

Section 2. Section 44-12-205, MCA, is amended to read:

"**44-12-205. Disposition of property following hearing.** (1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property, *if it is sold,* must be sold at public auction by the *law enforcement agency that seized the property* in the same manner provided by law for the sale of property under execution or the *law enforcement agency* may return the property to the holder of the security interest without proceeding with an auction. *The property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.*

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 11, 1989.

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# CHAPTER NO. 490

[HB 350]

AN ACT ALLOWING A SENTENCING COURT TO ORDER AN OFFENDER WHO IS REQUIRED TO MAKE RESTITUTION TO PAY THE COST OF SUPERVISING THE MAKING OF RESTITUTION; AND AMENDING SECTION 46-18-241, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-18-241, MCA, is amended to read:

"**46-18-241. Condition of restitution.** *(1)* As provided in 46-18-201, a sentencing court may require an offender to make restitution to any victim of the offense.

*(2) The court may require the offender to pay the cost of supervising the payment of restitution as provided in 46-18-245 by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5 or more than $250. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245.*"

Approved April 11, 1989.

# CHAPTER NO. 491

[HB 367]

AN ACT TO PERMIT FUNDS FROM THE WATER DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT AND THE WATER DEVELOPMENT ACCOUNT TO BE USED, UNDER CERTAIN CONDITIONS, TO PROTECT THE STATE'S INTEREST IN PROPERTY FOR WHICH A WATER DEVELOPMENT LOAN HAS BEEN SECURED; TO CREATE THE WATER DEVELOPMENT LOAN LOSS RESERVE FUND; AMENDING SECTIONS 85-1-102, 85-1-603, 85-1-604, 85-1-613, 85-1-615, 85-1-617, 85-1-618, AND 85-1-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

This bill would allow the department of natural resources and conservation to use funds in the water development special revenue account and water development general obligation bond proceeds to protect loans made under the water development private loan program.

The program has made approximately 55 loans totalling $4 million to private individuals, primarily for irrigation projects. In the event that any lien holder or the department would have to foreclose on any of these loans, the department would need to be in a position to protect its security interests. These loans are primarily secured with real estate mortgages. In

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those instances where the department is not in first lien position and a foreclosure is necessary, the department would need funds to buy out the first lien holder to gain control of the property. The property would then be resold to recoup the funds used to buy out the first lien as well as the department's initial loan funds.

This bill would also allow the department to use these funds to operate a project if a loan should go into default. If the loan recipient should walk away from a project, the department may need to temporarily operate the project to secure its interests until foreclosure proceedings are complete. An example would be a hydropower project that requires continual attention to guard against breakdown or damage.

This bill is intended to give the department access to funds that would be used to protect its security interests when other loan collection efforts have not worked. It is the intent of the legislature that every effort be made to avoid forced loan collections. It is further the intent of the legislature that any property acquired in the manner provided for in HB 367 be resold as expeditiously as possible to recover funds used under 85-1-65 and funds loaned to the borrower.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-1-102, MCA, is amended to read:

**"85-1-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(4) "Cost of works" means the cost of construction, including any rehabilitation or alteration of the project; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction; the cost of all water rights acquired or exercised by the

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department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and other expenses as may be necessary or incident to the financing authorized *in this part* and the construction of the works and the placing of the *works* in operation.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605 but does not include a governmental entity such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(8) "Project" means any one of the works defined *in this section* or any combination of works which are physically connected or jointly managed and operated as a single unit.

(9) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(10) "Water development account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to finance loans under the provisions of the water development program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients *and to purchase liens and operate property, as provided in 85-1-615,* from proceeds of bonds issued under part 6 of this chapter.

(11) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

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(12) "Water development state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.

(13) "Water development project" means a project as defined in subsection (8), except that water development projects are not limited to projects owned or operated by the department.

(14) "Water development debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury to be used as provided in 85-1-619.

(15) "Works" means all property *and* rights, easements, and franchises relating *to property* and *considered* necessary or convenient for *the* operation *of the works* and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems and includes all works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 2. Section 85-1-603, MCA, is amended to read:

**"85-1-603. Water development debt service fund created — coal severance tax allocated — water development loan loss reserve fund created.** (1) *(a)* There is created a water development debt service fund within the debt service fund type established in 17-2-102.

*(b)* The state pledges and allocates and directs to be credited to the water development debt service fund, as received:

*(i)* 1 ¼% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of such tax under 15-35-108(1) and (2);

*(ii)* any principal and accrued interest *under 85-1-613(3)(a)* received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

*(iii)* all interest income earned on proceeds of water development bonds;

*(iv)* revenue or money otherwise required to be paid into the water development state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617*; and*

*(v) money received from the water development loan loss reserve fund as the result of a loan loss.*

*(2) (a) There is created a water development loan loss reserve fund within the debt service fund type established in 17-2-102.*

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*(b) The state pledges and allocates and directs to be credited to the water development loan loss reserve fund all accrued interest under 85-1-613(3)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.*

*(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the water development loan loss reserve fund must be transferred to the water development debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."*

Section 3. Section 85-1-604, MCA, is amended to read:

**"85-1-604. Water development state special revenue account created — revenues allocated — limitations on appropriations from account.** (1) There is created a water development state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the water development debt service fund pursuant to 85-1-603, there shall be paid into the water development state special revenue account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; and

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests.

(3) Appropriations may be made from the water development state special revenue account for the following purposes and subject to the following conditions:

(a) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(a) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(b).

(b) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(a) and only that amount may be appropriated from the account for:

(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;

(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;

(iii) the development of the hydropower potential of state-owned dams;

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(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;

(v) the promotion of the development of offstream and tributary storage;

(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;

(vii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and

(viii) any other expenditures that meet the policies and objectives of the state water development program.

(c) An amount less than or equal to that paid into the account from the sources provided for in (c) and (d) of subsection (2) and only that amount may be appropriated from the account for loans and grants for water development projects and activities; *for purchase of liens and operation of property as provided in 85-1-615;* for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

Section 4. Section 85-1-613, MCA, is amended to read:

"**85-1-613. Limits on loans.** (1) No loan for a water development project or activity may be made from the water development state special revenue account or water development account that exceeds the least of $200,000, 10% of the estimated total funds potentially available for loans in the water development state special revenue account and water development account in the biennium in which the loan will be made, or 80% of the fair market value of the security given therefor. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) The period for repayment of loans may not exceed 30 years.

(3) The board shall from time to time establish the interest rate at which loans may be made under this part *that is sufficient to:*

*(a) cover the bond debt service for a loan; and*

*(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs.*"

Section 5. Section 85-1-615, MCA, is amended to read:

"**85-1-615. Security interests — purchase, operation, and resale of encumbered property.** *(1)* The state has a lien upon a project constructed with money from the water development state special revenue account or water development account for the amount of the loan and

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interest due the state. This lien may attach to any project facilities, equipment, easements, real property, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

*(2) From the funds available under 85-1-604(3)(c) or 85-1-617, the state may:*

*(a) purchase a lien that is prior to the state's lien if:*

*(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and*

*(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;*

*(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or*

*(c) purchase a prior lien as provided in (2)(a) and operate property as provided in (2)(b).*

*(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."*

Section 6. Section 85-1-617, MCA, is amended to read:

**"85-1-617. Issuing bonds.** (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such

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earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development debt service fund will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. Such bonds, notes, and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds and notes issued and sold.

(5) There is created a water development account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the water development account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development debt service fund *and the water development loan loss reserve fund* pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the water development debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Section 7. Section 85-1-618, MCA, is amended to read:

**"85-1-618. Restrictions on use of bond proceeds.** Water development bond proceeds may be used only for the purpose of making loans as provided in the water development program *or for purchasing liens and operating property as provided in 85-1-615.*"

Section 8. Section 85-1-623, MCA, is amended to read:

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"**85-1-623. Authorization of water development bonds.** The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $10 million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development account for loans as provided in the water development program *or for the purchase of liens and operation of property as provided in 85-1-615.*"

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved April 11, 1989.

# CHAPTER NO. 492

[HB 455]

AN ACT TO REQUIRE APPROVAL OF A TUITION AGREEMENT FOR AN ELEMENTARY SCHOOL PUPIL WHO LIVES MORE THAN 3 MILES FROM A SCHOOL OF THE PUPIL'S RESIDENT ELEMENTARY DISTRICT AND THE SCHOOL THE PUPIL WISHES TO ATTEND IS LESS DISTANT; AMENDING SECTION 20-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-5-301, MCA, is amended to read:

"**20-5-301. Elementary tuition with mandatory approval.** (1) Any child may be enrolled in and attend an elementary school outside of the elementary district in which *the child* resides when *the* elementary school is located in:

(a) any other district of the county of *the child's* residence;

(b) a county adjoining *the child's* county of residence; or

(c) a district of another state that is adjacent to the county of *the child's* residence.

(2) When a parent or guardian of a child wishes to have *the* child attend a school under the provisions of this section, *the parent or guardian* shall apply to the county superintendent of the county of *the parent or guardian's* residence before July 1 of the school fiscal year for which approval *is sought* except in those cases when substantial changes in circumstances occurred subsequently to justify later application. The application *must* be made on a tuition agreement form supplied by the county

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superintendent and *must* be approved, before permission to enroll in and attend school outside of the district under the provisions of this section may be granted, by:

(a) the trustees of the elementary district in which the child resides;

(b) the trustees of the district where the child wishes to attend school; and

(c) the county superintendent of the *county of the* child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve *the* application for a resident child when:

(a) the child resides more than 3 miles from any school of his resident elementary district *and the school the pupil wishes to attend is less distant than the nearest school of the resident elementary district*;

(b) the child resides more than 3 miles from any school of his resident elementary district and *the* district does not provide transportation under the provisions of this title;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school;

(e) the child has been declared by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a delinquent youth, as defined in 41-5-103, and has been ordered to be placed in a licensed youth care facility which is approved by the department of family services and as a result of the order the child is required to attend elementary school outside of the district of his residence *(*for purposes of this subsection, the prescribed geographic relationship of the receiving district to the district of residence does not apply*)*; or

(f) the child is required to attend elementary school outside the district of residence as the result of an order of a court of competent jurisdiction. For the purposes of this subsection (f), the following do not apply:

(i) the prescribed geographic relationship of the receiving district to the district of residence in this subsection (3); or

(ii) an order issued under Title 40, chapter 4, part 2.

(4) The trustees of the district where the school to be attended is located may disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsection (3) when they find

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that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall notify the parent in writing within 15 days of the first receipt of the application."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Termination.** [This act] terminates June 30, 1992, and no tuition agreement providing for tuition because of the requirement of [this act] may be entered into after June 30, 1991.

Approved April 11, 1989.

## CHAPTER NO. 493

[HB 458]

AN ACT ESTABLISHING PARENTS' RIGHTS REGARDING THE BIRTH OF A BABY; EXEMPTING DIRECT-ENTRY MIDWIVES FROM THE MEDICAL PRACTICE ACT; PROVIDING IMMUNITY FROM LIABILITY FOR HEALTH CARE PROVIDERS RENDERING BIRTH-RELATED SERVICES IN EMERGENCY SITUATIONS; AMENDING SECTION 37-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the practice of direct-entry midwifery has been practiced in the state of Montana since territorial days; and

WHEREAS, it is the intent of the Legislature to allow direct-entry midwives to continue serving Montana parents without fear of criminal prosecution; and

WHEREAS, the Legislature requests direct-entry midwives to establish standards of education and experience to practice as a midwife and to present those standards to the next regular legislative session.

THEREFORE, the Legislature of the State of Montana finds it reasonable and necessary to maintain the current status of direct-entry midwives in the state until the 1991 regular session.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Parents' rights regarding birth of baby.** Except as otherwise provided by law, parents have a right to give birth where and with whom they choose.

Section 2. **Affidavit required.** A direct-entry midwife shall file an affidavit with the department of commerce certifying that he or she has completed the emergency childbirth training segment of a state-approved emergency medical training program within 12 months of [the effective date of this act].

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Section 3. Section 37-3-103, MCA, is amended to read:

**"37-3-103. Exemptions from licensing requirements.** (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

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(m) the rendering of services by a physician's assistant in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103; *and*

*(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. A direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.*

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 4. **Limits on liability of health care provider in emergency situations.** (1) A physician licensed under Title 37, chapter 3, a nurse licensed under Title 37, chapter 8, or a hospital licensed under Title 50, chapter 5, rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation, is liable for civil damages for acts or omissions committed in providing such emergency obstetrical care or assistance only to the extent that those damages are caused by gross negligence or by willful or wanton acts or omissions.

(2) The limitations on liability provided in subsection (1) do not apply in the following cases:

(a) The physician, nurse, or hospital had provided prior medical diagnosis or treatment to the patient for a condition having a bearing on or relevance to the treatment of the obstetrical condition that required emergency services.

(b) Before rendering emergency obstetrical services, the physician, nurse, or hospital had a contractual obligation or agreement with the patient, another health care provider, or a third-party payer to provide obstetrical care for the patient.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 11, 1989.

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# CHAPTER NO. 494

[HB 518]

AN ACT TO REVISE THE BUDGET PROCEDURES FOR COMMUNITY COLLEGES; TO ALLOW A COMMUNITY COLLEGE TO RETAIN AND EXPEND STUDENT TUITION AND FEE REVENUE; AMENDING SECTIONS 20-15-310 AND 20-15-312, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-15-310, MCA, is amended to read:

**"20-15-310. Appropriation.** It is the intent of the legislature that all community college spending, other than from restricted funds or funds generated by an optional, voted levy, be *governed by the* provisions of *this part and* the state general appropriations act. The *state general fund appropriation must* be based on a *budget* amount per full-time equivalent student, *as determined by the legislature.* The student count may not include those enrolled in community service courses as defined by the board of regents."

Section 2. Section 20-15-312, MCA, is amended to read:

**"20-15-312. Calculation and approval of operating budget.** (1) Annually by June 15, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college *must* be financed in the following manner:

(a) The general fund appropriation *must* represent a specific percentage of the *budget amount per full-time equivalent student, as determined by the legislature.* This percentage *must* be specified in the appropriations act appropriating funds to the community colleges for each biennium. *This percentage does not apply to any portion of the unrestricted budget in excess of the budget amount per full-time equivalent student, as determined by the legislature.*

(b) *The mandatory levy amount must represent a specific percentage of the budget amount per full-time equivalent student, as determined by the legislature. This percentage must be specified for each community college by the board of trustees of the district and approved by the board of regents.*

(c) The funding obtained in *subsections (a) and* (b) of subsection (1) *plus the revenue derived from tuition and fee schedules approved by the board of regents and unrestricted income from any other source* is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget *must* be submitted to the board of regents for their review and approval.

(d) The amount estimated to be raised by the voted levy *must* be detailed separately in an expenditure schedule.

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(e) The spending of each restricted funding source shall be detailed separately in an expenditure schedule.

(f) The expenditure schedules provided in subsections (c), (d), and (e) of subsection (1) *must* represent the total operating budget of the community college.

(2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. *The* board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents."

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved April 11, 1989.

# CHAPTER NO. 495

[HB 542]

AN ACT REQUIRING AN APPLICANT FOR A WATER USE PERMIT TO SUBMIT INDEPENDENT EVIDENCE TO MEET THE SUBSTANTIAL CREDIBLE EVIDENCE STANDARD; AMENDING SECTION 85-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-311, MCA, is amended to read:

**"85-2-311. Criteria for issuance of permit.** (1) Except as provided in subsections (2) *and (3)*, the department shall issue a permit if the applicant proves by substantial credible evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

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(2) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(3) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (3) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (2) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (3)(b)(ii) and (3)(b)(iii) are met, the department shall consider the following factors:

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(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(4) *To meet the substantial credible evidence standard in this section, the applicant shall submit independent hydrologic or other evidence, including water supply data, field reports, and other information developed by the department, the U.S. geological survey, or the U.S. soil conservation service and other specific field studies, demonstrating that the criteria are met.*

*(5)* An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. *An* officer, agent, agency, or employee of the state may *not* knowingly permit, aid, or assist in any manner *an* unauthorized appropriation, diversion, impoundment, use, or other restraint. *A* person or corporation may *not*, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 11, 1989.

# CHAPTER NO. 496

[HB 576]

AN ACT TO REVISE THE LICENSING REQUIREMENTS FOR USED KENO MACHINES; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-5-612, MCA, is amended to read:

**"23-5-612. State license — fee — used keno machines.** (1) (a) The department, upon payment of the fee provided in subsection (1)(b) and

in conformance with rules adopted under 23-5-605, shall issue to the licensee a license for each video draw poker or keno machine.

(b) The department shall charge an annual license fee of $100 for each video draw poker machine and $100 for each keno machine. The department shall retain $100 of the total license fee collected for purposes of administering this part, except 23-5-615. The license expires on June 30 of each year.

(2) A used keno machine may be licensed under subsection (1) without meeting the requirements of 23-5-609 if:

*(a) it meets the requirements of 23-5-607 and 23-5-608;*

*(b) it has mechanical meters described in 23-5-609(4)(k) and electronic meters described in 23-5-609(4)(l); and*

*(c)* the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine that was *licensed by the department* prior to *January 1, 1989.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date — termination.** [This act] is effective July 1, 1989, and terminates June 30, 1990.

Approved April 11, 1989.

# CHAPTER NO. 497

[HB 577]

AN ACT TO ALLOW EXPANDED PARTICIPATION BY CERTAIN GOVERNMENT SUBDIVISIONS AND AUTHORITIES IN DEVELOPMENT CORPORATIONS; AND AMENDING SECTIONS 32-4-103, 32-4-201, AND 32-4-206, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 32-4-103, MCA, is amended to read:

"**32-4-103. Credit of state and local governments not pledged.** Under no circumstances is the credit of the state, *county, or municipal governments or their agencies or authorities* pledged *under this chapter.*"

Section 2. Section 32-4-201, MCA, is amended to read:

"**32-4-201. Incorporators — general powers — capital stock — articles of incorporation.** Nine or more persons, a majority of whom shall be residents of this state, who desire to create a development corporation under the provisions of this chapter for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state

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and, to that end, to exercise the powers and privileges hereinafter provided may be incorporated in the following manner:

(1) *The* persons shall by articles of incorporation filed in the manner prescribed in Title 35, under their hands and seals, set forth:

(a) the name of the corporation, which shall include the words "Development Corporation of Montana";

(b) the location of the principal office of the corporation, but *the* corporation may have offices in other places within the state as may be fixed by the board of directors;

(c) the purposes for which the corporation is founded, which shall include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation may not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from members, nonmember persons, firms, or corporations and state, federal, *county, or municipal* agencies *or authorities* for any of the purposes of the corporation; to issue *for the purposes of the corporation* its bonds, debentures, *convertible debentures,* notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the *indebtedness* by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part or interest *in its property, franchises, rights, and privilege,* without securing stockholder or member approval; provided that *a* loan to the corporation may *not* be secured in any manner unless all outstanding loans to the corporation are secured equally and ratably in proportion to the unpaid balance of *the* loans and in the same manner;

(iv) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any loans and the charges for interest and service connected *with the loans*; provided, however, that the corporation may not approve any application for a loan unless the person applying for the loan shows that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(v) to participate with any duly authorized private lending agency or city, *county,* state, or federal governmental lending agencies in the making of loans;

(vi) to purchase, receive, hold, lease, or otherwise acquire, *except by condemnation,* and to sell, convey, transfer, lease, or otherwise dispose of real

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and personal property, together with rights and privileges as may be incidental and appurtenant *to the property* and the use *of the property*, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(vii) to acquire the good will, business, rights, real and personal property, and other assets or any part or interest *in the assets* of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any person, firm, corporation, joint-stock company, association, or trust;

(viii) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments or for the purpose of disposing of real estate to others for the construction of industrial plants or other business establishments;

(ix) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(x) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder *of interest for indebtedness* exercise all the rights, powers, and privileges of ownership, including the right to vote;

(xi) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in subsections (1)(c)(vi) through (1)(c)(x) of this section, as security for the payment of any part of the purchase price *of the property, right, or thing of value*;

(xii) to cooperate with and avail itself of the facilities of the state planning and economic development divisions of the department of commerce and any similar governmental agencies and to cooperate with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of *the* communities or of this state or of any part *of the state*;

(xiii) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency *or authority*, whether state, federal, *county*, or municipal;

(xiv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number

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of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 35, so far as consistent with this chapter."

Section 3. Section 32-4-206, MCA, is amended to read:

**"32-4-206. Board of directors.** (1) The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and other officers and agents as the corporation by its bylaws shall authorize.

(2) The board of directors shall consist of *a* number, not less than nine, as determined in the first instance by the incorporators and thereafter annually by the stockholders of the corporation, *provided that any state, county, or municipal agency or authority that has made a grant or loan to the corporation shall have at least one seat on the board of directors and additional seats representative of its proportional investment in the corporation.*

(3) The directors need not be stockholders in the corporation.

(4) The board of directors may exercise all the powers of the corporation except as are conferred by law or by the bylaws of the corporation upon the stockholders and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director.

(5) The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation or, if no annual meeting *is* held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws.

(6) Directors and officers *are* not responsible for losses unless the *losses were* occasioned by the willful misconduct of *the* directors and officers."

Section 4. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 11, 1989.

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# CHAPTER NO. 498

[HB 597]

AN ACT REQUIRING THE TRUSTEES OF A SCHOOL DISTRICT TO ADOPT AND ADMINISTER A POLICY ON ASSESSMENT FOR PLACEMENT OF ANY CHILD WHO ENROLLS IN A SCHOOL OF THE DISTRICT AND WHOSE PREVIOUS PLACE OF INSTRUCTION WAS A NONPUBLIC SCHOOL THAT IS NOT ACCREDITED; REQUIRING SUCH A SCHOOL TO NOTIFY THE COUNTY SUPERINTENDENT EACH YEAR OF A STUDENT'S ATTENDANCE AT THE SCHOOL; AND AMENDING SECTIONS 20-3-324 AND 20-5-109, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **School district assessment for placement of a child who enrolls from a nonaccredited nonpublic school.** The trustees of a school district shall:

(1) adopt a district policy on assessment for placement of any child who enrolls in a school of the district and whose previous place of instruction was a nonpublic school that is not accredited;

(2) include in the adopted policy the following provisions:

(a) the specific assessment for placement to be administered to any child subject to the provisions of subsection (1);

(b) a procedure for grade and program placement of the child based on results of the assessment for placement, including considerations for the age and identified abilities of the child; and

(c) a hearing process before the board of trustees of the district if the parent or guardian of a child is not in agreement with the placement of the child and requests a hearing before the board; and

(3) administer the adopted policy required in subsection (1) in a uniform and fair manner.

Section 2. Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board *considers* necessary, accepting or rejecting *any* recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel *considered* necessary to carry out the various services of the district;

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(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive levy, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

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(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when *considered* advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather at each school of the district an American flag *that measures* not less than 4 feet by 6 feet;

*(23) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in [section 1]; and*

*(24)* perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 3. Section 20-5-109, MCA, is amended to read:

**"20-5-109. Nonpublic school requirements for compulsory enrollment exemption.** To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school shall:

(1) maintain records on pupil attendance and disease immunization and make *the* records available to the county superintendent of schools on request;

(2) provide at least 180 days of pupil instruction or the equivalent in accordance with 20-1-301 and 20-1-302;

(3) be housed in a building that complies with applicable local health and safety regulations;

(4) provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and

(5) in the case of home schools, notify the county superintendent of schools, *of the county in which the home school is located, in each school fiscal year* of the student's attendance at the school."

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Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 5, part 1, and the provisions of Title 20 apply to [section 1].

Approved April 11, 1989.

## CHAPTER NO. 499

[HB 671]

AN ACT ALLOWING THE SPEED LIMIT ON INTERSTATE HIGHWAYS WITHIN AN URBANIZED AREA TO INCREASE TO 65 MILES AN HOUR IF THE SPEED LIMIT OF 55 MILES AN HOUR IS NO LONGER REQUIRED FOR FEDERAL HIGHWAY FUNDING; ALLOWING THE SPEED LIMIT ON ALL HIGHWAYS TO BE SUBJECT TO THE BASIC RULE STATUTE IF NO SPEED LIMIT IS REQUIRED FOR FEDERAL HIGHWAY FUNDING; AMENDING SECTION 61-8-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-8-305, MCA, is amended to read:

"**61-8-305. Applicability of conservation speed limit.** (1) The provisions of 61-8-304 *do* not apply to those public streets and highways for which a speed limit lower than that required by federal law was applicable on March 2, 1974, under any other state, county, municipal, or other local law, ordinance, regulation, or order.

(2) The fuel conservation speed *limits* imposed by 61-8-304 remain in effect only as long as the establishment of *those* speed *limits* by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal-Aid Highways Amendments of 1974 and all acts amendatory thereto or any other federal statute.

*(3) If the speed limit of 55 miles an hour for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is no longer required by federal law as a condition to the state's continuing eligibility for federal highway funding, the speed limit within an urbanized area increases to 65 miles an hour.*

*(4) If there is no speed limit required by federal law as a condition to the state's continuing eligibility for federal highway funding, then the speed limit on Montana highways is subject to the basic rule and other speed restrictions in 61-8-303.*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 11, 1989.

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# CHAPTER NO. 500

[HB 122]

AN ACT REQUIRING A PERSONAL REPRESENTATIVE OF AN ESTATE TO GIVE ACTUAL NOTICE TO CREDITORS OF THE ESTATE WHOSE WHEREABOUTS ARE KNOWN OR ARE REASONABLY ASCERTAINABLE; REVISING THE TIME LIMITATIONS ON PRESENTATION OF CLAIMS; AND AMENDING SECTIONS 72-3-801 THROUGH 72-3-803, 72-3-808, AND 72-3-1004, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 72-3-801, MCA, is amended to read:

**"72-3-801. Notice to creditors.** *(1)* Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for 3 successive weeks in a newspaper of general circulation in the county announcing his appointment and address and notifying creditors of the estate to present their claims within 4 months after the date of the first publication of the notice or be forever barred.

*(2) A personal representative may give written notice by mail or other delivery to any creditor, notifying the creditor to present his claim within 4 months from the published notice if given as provided in subsection (1) or within 30 days from the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (1) or a similar notice.*

*(3) The personal representative is not liable to any creditor or to any successor of the decedent for giving or failing to give notice under this section."*

Section 2. Section 72-3-802, MCA, is amended to read:

**"72-3-802. Statutes of limitations — waiver — suspension.** *(1)* Unless an estate is insolvent, the personal representative, with the consent of all successors *whose interests would be affected*, may waive any defense of limitations available to the estate. If the defense is not waived, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid.

*(2)* The running of any statute of limitations measured from some other event than death *or the giving of notice to creditors* is suspended during the 4 months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow.

*(3)* For purposes of any statute of limitations, the proper presentation of a claim under 72-3-804 is equivalent to commencement of a proceeding on the claim."

Section 3. Section 72-3-803, MCA, is amended to read:

**"72-3-803. Nonclaim — limitations on presentation of claims — exceptions.** (1) *All* claims against a decedent's estate which arose

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before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, *tort,* or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented *within the earlier of the following time limitations:*

(a) within *1 year* after the decedent's death*; or*

*(b) within the time provided by 72-3-801(2) for creditors who are given actual notice and within the time provided in 72-3-801(1) for all creditors barred by publication. However, claims barred by the nonclaim statute at the decedent's domicile before the giving of notice to creditors in this state are also barred in this state.*

(2) *All* claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, *tort,* or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:

(a) a claim based on a contract with the personal representative, within 4 months after performance by the personal representative is due;

(b) any other claim, within *the latter of* 4 months after it arises *or the time specified in subsection (1)(a).*

(3) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance*; or*

*(c) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate.*"

Section 4. Section 72-3-808, MCA, is amended to read:

"**72-3-808. Payment of claims.** (1) Upon the expiration of *the earlier of the time limitations provided in 72-3-803 for the presentation of claims,* the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration.

(2) By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an

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order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

(3) The personal representative at any time may pay any just claim which has not been barred, with or without formal presentation, but he is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(a) the payment was made before the expiration of the time limit stated in subsection (1) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or

(b) the payment was made, due to the negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of his priority."

Section 5. Section 72-3-1004, MCA, is amended to read:

**"72-3-1004. Closing estate by sworn statement of personal representative.** (1) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than 6 months after the date of original appointment of a general personal representative for the estate, a verified statement stating that he, or a prior personal representative whom he has succeeded, has:

(a) *determined that the time limitation for presentation of creditors' claims has expired*;

(b) fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims which were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled; if any claims remain undischarged, the statement shall state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees, or it shall state in detail other arrangements which have been made to accommodate outstanding liabilities;

(c) sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected thereby; and

(d) complied with the provisions of 72-3-1006.

(2) If no proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates."

Approved April 12, 1989.

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# CHAPTER NO. 501

[HB 307]

AN ACT PROVIDING THAT NOMINATION OR ELECTION OF OUTFITTERS TO THE BOARD OF OUTFITTERS AND MONTANA OUTFITTERS' COUNCIL BE BY NOTARIZED MAIL-IN BALLOT RATHER THAN BY ATTENDANCE AT A MEETING; ELIMINATING THE ANNUAL MEETING FOR NOMINATION OR ELECTION; REQUIRING THAT ONE MEMBER OF THE BOARD OR COUNCIL BE ENGAGED IN THE FISHING OUTFITTING BUSINESS; AND AMENDING SECTION 2-15-1883, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-15-1883, MCA, is amended to read:

**"2-15-1883. (Temporary) Board of outfitters.** (1) There is a board of outfitters.

(2) (a) The board consists of seven members to be appointed by the governor.

(b) Five members must be licensed outfitters who are actively involved in the outfitting business. *At least one of the outfitter members must be a person primarily engaged in the fishing outfitting business.* Each outfitter member shall represent one of the five districts designated in 2-15-3402(2). Two qualified persons in each district must be nominated for appointment by the licensed outfitters residing in that district *by submitting by mail a notarized ballot, in a form and manner prescribed by the board. The board shall also prescribe a procedure for selecting persons to be nominated by mail-in ballot. The two outfitters receiving the most votes must be nominated for appointment. The department of commerce is responsible for all notifications, reporting, and counting of ballots.* Names of nominees must be submitted to the governor, who will select one outfitter from each district to be a board member.

(c) The governor shall also appoint one member who is an employee of the department of fish, wildlife, and parks and one member from the general public.

(3) A vacancy on the board must be filled in the same manner as the original appointment.

(4) The members shall serve staggered 3-year terms and take office on the day they are elected.

(5) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(6) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

**2-15-1883. (Effective July 1, 1991) Montana outfitters' council.** (1) There is a Montana outfitters' council.

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(2) The council consists of seven members. Each member shall be a licensed outfitter and shall represent one of the seven fish and game administrative districts. *At least one of the members must be a person primarily engaged in the fishing outfitting business.* A member shall be selected by the licensed outfitters residing in that district by *submitting by mail a notarized ballot, in a form and manner prescribed by the council. The council shall also prescribe a procedure for nominating persons to be elected by mail-in ballot. The outfitter receiving the highest number of votes* cast by written ballot shall *be* the member from the district. *The outfitter receiving the second highest number of votes* shall be *the alternate member* to serve if the member is unable to act.

(3) If *the* member *and the* alternate *resign* or a vacancy exists for any reason on the council, the council at its next official meeting after the vacancy occurs shall recommend to the director of the department of fish, wildlife, and parks the names of two licensed outfitters residing in the administrative region where the vacancy occurred to fill the vacancy for the remainder of the unexpired term. If a vacancy cannot be filled from that administrative region, the appointment must be made from an adjoining region. If a vacancy cannot be filled from an adjoining region, the appointment must be made from any remaining region. The director shall fill the vacancy from the names submitted.

(4) The members shall serve staggered 3-year terms and take office on the day they are elected.

(5) The council is allocated to the department.

(6) The council is not subject to the provisions of 2-15-122.

(7) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5)."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 12, 1989.

# CHAPTER NO. 502

[HB 319]

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO PRESCRIBE THE TIME FRAME WITHIN WHICH A DEATH OR FETAL DEATH CERTIFICATE MUST BE FILED WITH THE LOCAL REGISTRAR PRIOR TO INTERMENT OR DISPOSITION OF THE BODY WHEN THE PLACE OF DEATH IS KNOWN; AND AMENDING SECTION 50-15-401, MCA.

STATEMENT OF INTENT

A statement of intent is required for [this act] because it authorizes the department of health and environmental sciences to prescribe the time

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frame within which a certificate of death must be filed. It is the intent of the legislature that if the department adopts new rules or amends existing rules on the subject of the provisions of [this act], the department's actions must adhere to and be consistent with the requirements of the Montana Administrative Procedure Act in regard to notice and hearing.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-15-401, MCA, is amended to read:

**"50-15-401. Death certificate to be filed.** A death or fetal death certificate shall be filed with the local registrar prior to interment or other disposition of a dead body. If the place of death is known, the certificate shall be filed within *a time frame prescribed by the department.* If the place of death or fetal death is unknown, the certificate shall be filed within 24 hours after the occurrence is known."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 12, 1989.

# CHAPTER NO. 503

[HB 336]

AN ACT TO PROHIBIT DISCRIMINATION IN HOUSING AGAINST PERSONS OR FAMILIES WITH CHILDREN; AND AMENDING SECTION 49-2-305, MCA.

WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination by the state or any person, firm, corporation, or institution against any person on account of social condition; and

WHEREAS, Article II, section 15, of the Montana Constitution confers upon children the same rights as those conferred upon adults, with the exception of rights precluded by laws that enhance the protection of persons under 18 years of age; and

WHEREAS, persons or families with children have been denied housing opportunities for reasons unrelated to public safety, public health, or the protection of children.

THEREFORE, it is appropriate that the Legislature enact a law to enhance the protection of children by prohibiting the denial of housing to persons or families with children.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 49-2-305, MCA, is amended to read:

**"49-2-305. Discrimination in housing.** (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory

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practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, *familial status,* physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, *familial status,* physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; or

(d) to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, *familial status,* physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

*(4) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:*

*(a) provided under any state or federal program specifically designed and operated to assist elderly persons;*

*(b) intended for, and solely occupied by, persons 62 years of age or older; or*

*(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3605(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on [the effective date of this act].*

*(5) The prohibitions of this section against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.*

*(6) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."*

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Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 12, 1989.

# CHAPTER NO. 504

[HB 389]

AN ACT CLARIFYING THE DEFINITION OF THE PRACTICE OF PRACTICAL NURSING; AND AMENDING SECTION 37-8-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-8-102, MCA, is amended to read:

**"37-8-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing provided for in 2-15-1844.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing pr.cess. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (3)(a):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

(b) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures in the

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observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical center or junior college."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 12, 1989.

# CHAPTER NO. 505

[HB 440]

AN ACT PROVIDING FOR A 1 PERCENT LONGEVITY PAYMENT FOR COUNTY SHERIFFS; EXCLUDING THAT ADDITIONAL SALARY AMOUNT FROM THE BASE SALARY OF THE SHERIFF FOR PURPOSES OF COMPUTING THE SALARY FOR DEPUTY SHERIFFS AND UNDERSHERIFFS; ALLOWING A COUNTY GOVERNING BODY TO RESTORE ALL OR PART OF THE LONGEVITY INCREASES THAT WERE LOST AS A RESULT OF COUNTY WAGE FREEZES; AMENDING SECTIONS 7-4-2503 AND 7-4-2504, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-2503, MCA, is amended to read:

"**7-4-2503. Salary schedule for certain county officers.** (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties *where the* office is authorized, for the fiscal year beginning July 1, 1981, is computed by adding the annual base salary of:

(a) $14,000 for the counties of the first through fifth class to the population increment of $10 for each 100 persons or major fraction thereof

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included in the county's population as determined by the 1980 federal decennial census; or

(b) $12,000 for counties of the sixth and seventh class to the population increment of $20 per 100 persons or major fraction thereof in the county's population as determined by the 1980 federal decennial census.

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

*(c) The county sheriff shall receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.*

(3) (a) In each county with a population in excess of 30,000, the county attorney shall be a full-time official under 7-4-2704, and his salary for the fiscal year beginning July 1, 1981, shall be $36,500. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1981, shall be $36,500.

(c) Beginning on July 1, 1982, and on July 1 of each succeeding year, each county attorney shall be entitled to an increase in salary calculated by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent

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fiscal year shall be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In *this* case the cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of his employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of his employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics shall be the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year shall be based on the last calendar year's annual estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 2. Section 7-4-2504, MCA, is amended to read:

**"7-4-2504. Salaries to be fixed by resolution — cost-of-living increments.** (1) The county governing body shall by resolution, on or before July 1, 1982, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if he receives a salary) for cost-of-living increase by adding to the annual salary computed under 7-4-2503 an increment calculated by applying to the annual salary established by 7-4-2503(1) plus previous cost-of-living increments, 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, county attorney, and coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year shall be added to all cost-of-living increments

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granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such case the cost-of-living increment that would have been received for such fiscal year, computed on the prior fiscal year, may not be added to previous increments.

*(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for sheriffs in [section 1] must also be restored for the years for which the cost-of-living increment was restored.*

*(3)* If the application of 7-4-2503 does not qualify a county official for a salary increase of at least 7% on July 1, 1981, his salary on that date shall be increased by an amount sufficient to provide him total salary equal to 7% more than during the previous year.

*(4)* The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect upon the first day of each ensuing fiscal year."

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Approved April 12, 1989.

# CHAPTER NO. 506

[HB 447]

AN ACT REVISING THE LIMITS ON THE STORAGE OF SMOKELESS POWDER AND SMALL ARMS PRIMERS; AMENDING SECTIONS 7-33-4205, 50-3-103, 50-61-102, AND 50-62-108, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Exceeding fire code limits for storage of smokeless powder and small arms primers.** (1) A retail establishment may exceed the limits prescribed by an adopted fire or safety code or a local government ordinance or resolution for the storage of smokeless powder and small arms primers if the storage conforms to the provisions contained in [section 2].

(2) Nothing in this section may be construed to allow repackaging of smokeless powder from larger to smaller containers on the retail premises.

Section 2. **Restrictions on storage of smokeless powder and small arms primers.** (1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

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(a) no more than 20 pounds are on display in a customer service area;

(b) the storage area is clearly posted as off limits to customers;

(c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and

(d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire marshal or a fire marshal of the local jurisdiction, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with ⅝-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation.

Section 3. Section 7-33-4205, MCA, is amended to read:

**"7-33-4205. Regulation of explosives and inflammable materials.** *Except as provided in [section 1], the* city or town council has power to regulate and prevent the storage or handling of gunpowder, giant powder, nitroglycerine, other inflammable explosives or materials, tar, pitch, kerosene, oils, and turpentine and to prohibit the storage of the same within 3 miles of the city limits."

Section 4. Section 50-3-103, MCA, is amended to read:

**"50-3-103. Rules promulgated by state fire marshal.** (1) Rules promulgated by the state fire marshal by authority of 50-3-102 shall be reasonable and calculated to effect the purposes of this chapter. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within

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congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibers; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; *storage of smokeless powder and small arms primers;* and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of commerce and filing with the secretary of state.

(3) Standards of the national fire protection association, United States bureau of standards, and American insurance association may be adopted in whole or in part by reference.

(4) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act.

(5) Any person violating any rule made under the provisions of this part shall be guilty of a misdemeanor."

Section 5. Section 50-61-102, MCA, is amended to read:

**"50-61-102. Fire marshal to administer chapter.** The state fire marshal has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under his general charge and supervision, shall assist him in giving effect to this chapter, and are subject to his direction and the rules adopted *under 50-3-102 and 50-3-103* for the enforcement of *[sections 1 and 2] and* this chapter."

Section 6. Section 50-62-108, MCA, is amended to read:

**"50-62-108. Conditions or materials creating fire hazard — order to remedy.** If the state fire marshal, deputy state fire marshal, or any officer mentioned in 50-62-101 finds in any building or premises subject to their inspection any combustible materials, inflammable conditions, *improperly stored smokeless powder or small arms primers,* or fire hazards dangerous to the safety of the building premises or to the public, such officer shall order such material, conditions, or hazards to be removed or remedied. Such order shall be in writing and directed generally to the owner, lessee, agent, or occupant of such building or premises."

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 50, chapter 3, and the provisions of Title 50, chapter 3, apply to [sections 1 and 2].

Section 9. **Effective date.** (1) [This act] is void if:

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(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990.

Approved April 12, 1989.

# CHAPTER NO. 507

[HB 483]

AN ACT ALLOWING A LOCAL PORT AUTHORITY TO ENGAGE IN ECONOMIC DEVELOPMENT-RELATED ACTIVITIES DESIGNED TO AID COMMERCE AND STIMULATE THE CREATION OF JOBS; AND AMENDING SECTIONS 7-14-1104, 7-14-1111, 7-14-1112, 7-14-1133, AND 7-14-1137, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-14-1104, MCA, is amended to read:

**"7-14-1104. Purpose — public and governmental functions.** *(1) The purposes of a port authority are to:*

*(a) promote, stimulate, develop, and advance the general welfare, commerce, economic development, and prosperity of its jurisdiction and of the state and its citizens;*

*(b) endeavor to increase the volume of commerce within the jurisdiction of the port authority and the state through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of ports and transportation and storage facilities that promote the safe, efficient, and economical handling of commerce;*

*(c) cooperate and act in conjunction with other organizations, public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity in the state;*

*(d) support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state and otherwise stimulate, assist in, and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the*

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*state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.*

*(2)* The acquisition of any land or interest *in land* pursuant to this part, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of ports and transportation and storage facilities, and the exercise of any powers granted to port authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency, as provided in this part, must be used for public and governmental purposes and as a matter of public necessity."

Section 2. Section 7-14-1111, MCA, is amended to read:

"**7-14-1111. General powers of authority**. An authority has all the powers necessary or convenient to carry out the purposes of this part, including but not limited to the power to:

(1) certify annually to the governing bodies creating it the amount of tax to be levied by the governing bodies for port purposes;

(2) sue and be sued, have a seal, and have perpetual succession;

(3) execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this part;

(4) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect ports and transportation and storage facilities. For such purposes an authority may, by purchase, gift, devise, lease, or otherwise, acquire real or personal property or any interest therein, including easements.

(5) establish comprehensive port zoning regulations in accordance with the laws of this state;

(6) acquire, by purchase, gift, devise, lease, or otherwise, existing ports and transportation and storage facilities. However, an authority may not acquire or take over any port or transportation and storage facility owned or controlled by another authority, county, municipality, or public agency without the consent of such authority, county, municipality, or public agency.

*(7) provide financial and other support to organizations in its jurisdiction, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4, whose purpose is to promote, stimulate, develop, and advance the general welfare, economic development, and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including the creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state, all of which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maximum opportunities for employment and improvement in the standards of living of citizens of the state."*

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Section 3. Section 7-14-1112, MCA, is amended to read:

"**7-14-1112. Rules.** An authority may adopt, amend, and repeal such reasonable resolutions, rules, and orders as it considers necessary *for its own administration, management, and governance as well as* for the management, *governance*, and use of any port or transportation and storage facility owned by it or under its control. No rule, order, or standard prescribed by the commission may be inconsistent with or contrary to any act of the congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority a copy of all its rules for public inspection."

Section 4. Section 7-14-1133, MCA, is amended to read:

"**7-14-1133. Bonds and obligations.** (1) *Except for providing financial support to a private development organization, including a corporation organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens, an* authority may borrow money for any of its corporate purposes and issue bonds therefor, including refunding bonds, in such form and upon such terms as it determines, payable out of any revenues of the authority, including revenues derived from:

(a) any port or transportation and storage facility;

(b) taxes levied pursuant to 7-14-1131 or 67-10-402;

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that no bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source are pledged exceeds the amount of such revenues to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, any bonds issued pursuant to this part by an authority may be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority, county, or municipality pursuant to the provisions of this part are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any such bonds, the authority, county, or municipality may by resolution make and enter into any covenant, agreement, or

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indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenues referred to in this part, prior to the payment of current costs of operation and maintenance of the facilities.

*(6) Nothing in this section or 7-14-1134 may be construed to limit the use of port authority revenues, including federal and state money as described in 7-14-1136, to make grants and loans or to otherwise provide financial and other support to private development organizations, including corporations organized under the provisions of the development corporation act in Title 32, chapter 4. Under no circumstances may the credit of the state, county, or municipal governments or their agencies or authorities be pledged to provide financial support to such development organizations.*"

Section 5. Section 7-14-1137, MCA, is amended to read:

"**7-14-1137. Tax exemption.** Any property in this state acquired by an authority for port purposes pursuant to the provisions of this part, any income derived by the authority from the ownership, operation, or control thereof, *including property acquired, and income derived from organizations, including corporations organized under Title 32, chapter 4, whose purpose is to advance the economic development of its jurisdiction and of the state and its citizens,* are exempt from taxation to the same extent as other property used for public purposes."

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 12, 1989.

# CHAPTER NO. 508

[HB 489]

AN ACT INCREASING THE PENALTY FOR THE TRANSMISSION OF A FALSE REPORT OR WARNING OF AN IMPENDING EXPLOSION; AND AMENDING SECTION 45-8-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-8-101, MCA, is amended to read:

"**45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

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(d) discharging firearms;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire or other catastrophe in such a place that its occurrence would endanger human life;

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; *or*

*(j) transmitting a false report or warning of an impending explosion in such a place that its occurrence would endanger human life.*

(2) *Except as provided in subsection (3), a* person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

*(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."*

Approved April 12, 1989.

# CHAPTER NO. 509

[HB 536]

AN ACT REQUIRING AN APPLICANT FOR AN INSURANCE AGENT, SOLICITOR, OR ENROLLMENT REPRESENTATIVE LICENSE TO COMPLETE A COURSE OF PRELICENSING EDUCATION PRIOR TO THE LICENSING EXAMINATION; AUTHORIZING THE COMMISSIONER OF INSURANCE TO REVIEW AND APPROVE COURSES AND COLLECT FEES FOR PRELICENSING EDUCATION; CREATING AN ADVISORY COUNCIL; AMENDING SECTIONS 2-15-122, 33-2-708, 33-17-202, 33-17-211, AND 33-30-312, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is necessary because this bill delegates rulemaking authority to the insurance commissioner for approval of prelicensing education, including course content, instructors, and instructional format standards and application forms documenting the completion of the courses.

Standards for instructional format should accommodate Montana's geography and allow instruction by teleconferencing, computer-assisted training, and other available technologies. Correspondence courses and video cassettes for self-instruction at home should not be permitted until the potential for abuse can be minimized.

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Course content standards should address a reasonable distribution of hours between such fields as regulatory provisions, relevant income tax aspects, actuarial or claims adjusting practices, or other fields that pertain to the type of license sought. The standards should also indicate levels of knowledge that the student should attain through these courses.

The commissioner may authorize a certificate of completion form for the instructor to sign when a license applicant completes the 40th hour of instruction. Rules and forms should allow an applicant to receive instruction from two or more course providers and allow the applicant in this situation to obtain partial completion certificates from each course provider.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** The purposes of [sections 2 and 3] are to further protect insurance consumers by producing better trained and more dedicated insurance agents, solicitors, and enrollment representatives; to educate and qualify prospective agents, solicitors, and representatives to pass the state insurance agent's license examination; and to provide standards for the qualification of instructors, courses, and materials used to train prospective agents, solicitors, and representatives.

Section 2. **Prelicensing education — basic requirement.** (1) (a) A person applying for a license to act as an agent or solicitor for property, casualty, and surety insurance shall complete 40 hours of approved prelicensing education courses in those areas of insurance within 12 months prior to the examination, unless he is exempted from the requirement under subsection (3).

(b) A person applying for a license to act as an agent or solicitor for life and disability insurance or as an enrollment representative for a health service corporation shall complete 40 hours of approved prelicensing education courses in those areas of insurance within 12 months prior to the examination, unless he is exempted from the requirement under subsection (3).

(2) A person applying for licenses to act as an agent or solicitor for both the property, casualty, and surety areas and the life and disability areas must meet the education requirements in all the areas of insurance.

(3) The minimum prelicensing education requirement does not apply to a person who:

(a) has been licensed within the 12 preceding months as an agent or solicitor in another state that requires prelicensing education and has completed the education in the other state;

(b) seeks a nonresident license, having been licensed as an agent in his state of residence for at least 1 year;

(c) seeks a nonresident license and is from a state having a prelicensing education requirement;

(d) seeks to reinstate a license lapsed for less than 2 years;

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(e) seeks a temporary license under 33-17-216; or

(f) is exempt from examination requirements under 33-17-212(5).

Section 3. **Review and approval of prelicensing education courses by commissioner — advisory council.** (1) The commissioner shall approve prelicensing education instruction offered to persons intending to apply for a license under 33-17-202 or 33-30-312. Course content, instructors, and instructional format must be approved and reviewed periodically at the discretion of the insurance commissioner.

(2) In formulating rules and standards for the approval of prelicensing education courses, the commissioner shall consult with an advisory council consisting of two persons who are life and disability agents or health service corporation enrollment representatives, two property and casualty agents, one person employed by an insurer, and one health enrollment representative. The commissioner shall appoint the members of this advisory council pursuant to 2-15-122 and shall consult with them prior to approving courses. The provisions of 2-15-122(5), (9), and (10) do not apply to this advisory council.

(3) In conducting periodic reviews of course content, instructors, or instructional format, the commissioner may exercise any investigative power of his office created under 33-1-311 or 33-1-315.

(4) If, pursuant to review or investigation, the commissioner determines that a prelicensing education program is not being operated in compliance with standards established under this section, he may revoke the program's approval, place the program under probationary approval, or issue a cease and desist order under 33-1-318.

Section 4. Section 2-15-122, MCA, is amended to read:

**"2-15-122. Creation of advisory councils.** (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, *the state auditor,* and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(2) Each advisory council created under this section shall be known as the ".... advisory council".

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall

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serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in 2-15-102(7).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed $25 for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) name, in accordance with subsection (2) of this section;

(b) composition;

(c) names and addresses of the appointed members;

(d) purpose;

(e) term of existence, in accordance with subsection (10) of this section.

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor or by the board of public education, the board of regents of higher education, the state board of education, the attorney general, *the state auditor,* or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (1)(c)

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of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary."

Section 5. Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) The commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees and licenses:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (b) below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers ..... $ 300.00

(B) foreign insurers ..... 300.00

(ii) annual continuation of certificate of authority ..... 300.00

(iii) reinstatement of certificate of authority ..... 25.00

(iv) amendment of certificate of authority ..... 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state ..... 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation ..... 25.00

(c) filing bylaws or amendment thereto where required ..... 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority ..... 25.00

(e) resident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) ..... 15.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) ..... 15.00

(iii) appointment of agent, each insurer ..... 10.00

(iv) annual renewal, each insurer ..... 10.00

(v) temporary license ..... 10.00

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(vi) amendment of license (excluding additions thereto) or reissuance of master license ..... 10.00

(f) nonresident agent's license:

(i) application for original license, including issuance of license, if issued (life and/or disability) ..... 100.00

(ii) application for original license, including issuance of license, if issued (other than life and/or disability) ..... 100.00

(iii) appointment of agent, each insurer ..... 10.00

(iv) annual renewal, each insurer ..... 10.00

(v) amendment of license (excluding additions thereto) or reissuance of master license ..... 10.00

(g) solicitor's license:

(i) application for original license, including issuance of license, if issued ..... 15.00

(ii) annual renewal of license ..... 15.00

(iii) appointment of solicitor ..... 10.00

(h) examination for license as agent or solicitor, each examination ..... 15.00

(i) surplus lines agent license:

(i) application for original license and for issuance of license, if issued ..... 50.00

(ii) annual renewal of license ..... 50.00

(j) adjuster's license:

(i) application for original license and for issuance of license, if issued ..... 15.00

(ii) annual renewal of license ..... 15.00

(k) insurance vending machine license, each machine, each year ..... 10.00

(l) commissioner's certificate under seal (except when on certificates of authority or licenses) ..... 10.00

(m) copies of documents on file in the commissioner's office, per page ..... .50

(n) policy forms:

(i) filing each policy form ..... 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks ..... 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days ..... 100.00

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*(o) applications for approval of prelicensing education courses:*

*(i) reviewing initial application ..... 150.00*

*(ii) periodic review ..... 50.00*

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges received pursuant to Title 33, chapter 11, part 1, that are collected by him pursuant to Title 33 and the rules adopted thereunder.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123."

Section 6. Section 33-17-202, MCA, is amended to read:

**"33-17-202. General qualifications of agents and solicitors.** (1) For the protection of the people of this state the commissioner *may* not issue, continue, or permit to exist any agent or solicitor license as to insurance, except in compliance with this chapter. *In order to be licensed as an agent or solicitor, a person:*

(a) must be 18 years of age or more;

(b) must be a resident in and of this state or of another state if by reciprocal arrangements made by the commissioner with the other state similar *licensure* privileges are granted to residents of this state;

(c) must have been appointed as agent by an authorized insurer, subject to issuance of the license;

(d) for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation;

(e) must be competent, trustworthy, and of good reputation;

(f) must be reasonably familiar with the provisions of this code which govern his operations as an insurance agent or solicitor *and, when required by [section 2], must have completed 40 hours of approved prelicensing education in the areas of:*

*(i) property, casualty, and surety insurance within 12 months before taking the examination in those areas of insurance; or*

*(ii) life and disability insurance within 12 months before taking the examination in those areas of insurance;*

(g) must pass an examination for the license required under this chapter;

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(h) for an agent's license as to life or disability insurance, must not be a funeral director, undertaker, or mortician operating in this or any other state or an officer, employee, or representative thereof or hold an interest in or benefit from such a business in this or any other state.

(2) *The commissioner shall determine* the qualifications as to competence, training, experience, and knowledge of the provisions of this code governing operations as an agent or solicitor, as provided for in subsection (1), of applicant agents or solicitors proposing to represent only insurers who confine their business in this state substantially to the insuring of the property, interests, and risks of farmers. *The* commissioner shall *require* qualifications only *for* the kinds of insurance policies which the applicant will handle as a licensee."

Section 7. Section 33-17-211, MCA, is amended to read:

**"33-17-211. Application for license.** (1) Application for an agent or solicitor license must be made to the commissioner by the applicant and be signed and sworn to by the applicant before a notary public.

(2) The commissioner may designate the forms for application for license, which must require full answers to questions *that* may reasonably be necessary to determine the applicant's identity, residence, personal history, business record, experience and training in insurance, *completion of the required prelicensing education courses,* and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.

(3) *The* application *for an agent's license* must state the kinds of insurance proposed to be transacted and be accompanied by written appointment of the applicant as agent by an authorized insurer, subject to issuance of the license.

(4) *The* application *for a solicitor's license* must be accompanied by written appointment of *the* applicant as solicitor by a licensed agent, subject to issuance of the license.

(5) If the applicant for an agent license is a partnership or corporation, the application shall show, in addition, the names of all members, officers, and directors and shall designate each individual who is to exercise the powers to be conferred by the license upon the partnership or corporation. Each individual so designated shall furnish information as to himself, as part of the application, as though for an individual license.

(6) If the applicant for an agent license is an agents' association pursuant to 33-17-205, the application must show the names and residence addresses of the association's officers and trustees.

(7) *The* application *for licensure as either an agent or solicitor* must show whether *the* applicant was ever previously licensed to transact any kind of insurance in this state or elsewhere; whether any license was ever refused, suspended, or revoked; whether any insurer, general agent, or agent, in the case of a solicitor application, claims *the* applicant *is* indebted to it and, if so, the details *of the claim* and the defenses, if any, of the applicant; and whether *the* applicant ever had an agency contract canceled and the facts *concerning the cancellation.*

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(8) The commissioner shall require as part of the application for license the certificate of an officer or representative of the insurer proposed to be represented, in the case of applicants for license as agent, or of the proposed employing agent, in the case of applicants for license as solicitor, as to whether the applicant is known to *the* officer or representative, whether the insurer or agent has investigated the character and business record of the applicant and the uses to be made of the license, if granted, and his opinion, based on investigation, as to *the* applicant's trustworthiness and competence.

(9) All applications must be accompanied by the applicable license fee, appointment of agent fee where applicable, and examination fee where an examination is required under 33-17-212, in the respective amounts stated in 33-2-708."

Section 8. Section 33-30-312, MCA, is amended to read:

**"33-30-312. Enrollment representative — filing with and approval by commissioner — license.** (1) Each corporation subject to the provisions of this chapter shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed as an enrollment representative. The notice shall be accompanied by a written application, upon a form furnished by the commissioner, from the appointee. The commissioner shall issue to that appointee a license which states that the person named is a constituted enrollment representative of the corporation in this state if, upon receipt of this written notice, when accompanied by the proper fee, it appears that:

(a) the appointee is a competent and suitable person who intends to hold himself out in good faith as the corporation's enrollment representative; and

(b) he qualifies under the provisions of this section.

(2) For appointees who have not acted as an enrollment representative for a health service corporation for a period of 2 years prior to July 1, 1975, if he considers it desirable, the commissioner may require an appointee to submit to an examination to determine the qualifications of the appointee to act as an enrollment representative in this state. This examination must be the same as given to applicants for a disability insurance agent license as provided for in 33-17-212 through 33-17-214. *A person required to take this examination must fulfill the prelicensing education requirement set by [section 2].*

(3) Upon receipt by the commissioner of notification from a health service corporation that the corporation desires a particular individual to be appointed as its enrollment representative, that person has a temporary enrollment representative's license until the commissioner notifies the corporation of action taken upon the application. If the commissioner rejects the application, the prospective appointee's eligibility to act as an enrollment representative ceases on the day the corporation is notified of rejection."

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 17, part 2,

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and the provisions of Title 33, chapter 17, part 2, apply to [sections 1 through 3].

Section 11. **Applicability.** [This act] applies to persons applying for a license as an insurance agent, solicitor, or enrollment representative on or after January 1, 1990.

Section 12. **Effective date.** [This act] is effective January 1, 1990.

Approved April 12, 1989.

# CHAPTER NO. 510

[HB 630]

AN ACT REVISING THE LAW RELATING TO THE PAYMENT OF SERVICE CHARGES FOR REFUSE DISPOSAL DISTRICT FEES FOR MOBILE HOME PARKS; REQUIRING THE REGISTERED OWNER OF EACH MOBILE HOME IN THE MOBILE HOME PARK TO PAY THE FEE; AMENDING SECTION 7-13-232, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-13-232, MCA, is amended to read:

**"7-13-232. Determination of service charge.** (1) The fees shall be based upon a family residential unit, and fees for commercial and industrial accounts shall be based on the comparison with a typical residential unit as to volume and type of waste produced.

*(2) Fees for mobile home park accounts must be paid by the registered owner of each mobile home in the mobile home park.*

*(3)* In no case shall the fee for disposal service exceed one-half the total fee for both collection and disposal services."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved April 12, 1989.

# CHAPTER NO. 511

[HB 647]

AN ACT AUTHORIZING CITIES AND TOWNS TO ISSUE SMALL DENOMINATION GENERAL OBLIGATION BONDS, TO BE KNOWN AS "CITIZEN BONDS"; AMENDING SECTIONS 7-7-103, 7-7-4208, 7-7-4236, 7-7-4251, 7-7-4261, AND 7-7-4265, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Citizen bonds authorized.** (1) A city or town authorized to sell general obligation bonds under this chapter may issue and sell any portion of the bond in denominations of less than $5,000, either by competitive public sale or directly to members of the public, at preestablished interest rates.

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(2) Citizen bonds may be issued for any purpose for which a city or town may issue general obligation bonds.

(3) Bonds issued under [sections 1 through 3] may be known as "citizen bonds".

(4) An officer, employee, contracted financial consultant, or contracted advisor employed or retained by a city or town selling citizen bonds may not purchase those bonds.

Section 2. **Citizen bonds — procedural requirements prior to issuance.** (1) Prior to final passage of the resolution provided for in 7-7-4236, a city or town shall notify the attorney general of its intention to issue citizen bonds.

(2) Prior to issuing citizen bonds, a city or town shall make available to interested investors:

(a) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels;

(b) application forms for the purchase of citizen bonds, which must specify at a minimum:

(i) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

(ii) the issue date, maturity dates, and the dates on which interest will be earned and paid;

(iii) the denominations of the bonds and the maximum amount of bonds that any one buyer may purchase;

(iv) the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and

(v) the provision made for the transfer of ownership of outstanding bonds; and

(c) any other information that the attorney general may require.

Section 3. **Citizen bonds — procedure when issue not fully subscribed.** If an entire issue of unsubscribed bonds is not fully subscribed during the period of time that the city or town has set for the sale of the bonds, the citizen bonds may be sold in the manner permitted for other municipal general obligation bonds.

Section 4. **Zero-coupon and capital appreciation bonds.** The terms "zero-coupon bonds" and "capital appreciation bonds", as used in Title 7, chapter 7, part 42, mean those forms of bonds that make no periodic interest payments but rather are sold at a discount from their face value.

Section 5. Section 7-7-103, MCA, is amended to read:

**"7-7-103. Review by attorney general — report — review of citizen bonds.** (1) The attorney general shall examine certified copies of

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all proceedings preliminary to the issuance of general obligation bonds by any county, city, or town which are submitted to him for examination, and if the proceedings are found to be regular and valid, he shall deliver to the recording officer of the local government a report of his examination and determination.

(2) A certified copy of the report shall be filed with the officer required by law to register the bonds, and a notation *of the filing* shall be entered in the bond register.

*(3) Within 10 days of receipt of the notice provided for in [section 2], the attorney general may impose any requirements he considers necessary to adequately protect both the issuing city or town and the purchasers of the bonds."*

Section 6. Section 7-7-4208, MCA, is amended to read:

**"7-7-4208. Types of general obligation bonds.** *(1) Except as provided in subsection (2), all* bonds issued by any city or town shall be either amortization bonds or serial bonds. All things being equal, amortization bonds shall be issued in preference to serial bonds; otherwise, serial bonds may be issued.

*(2) Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, with no preference for amortization bonds."*

Section 7. Section 7-7-4236, MCA, is amended to read:

**"7-7-4236. Resolution to issue bonds.** (1) If 40% or more of the qualified electors of the city or town entitled to vote on the question of issuing bonds voted thereon and a majority of the votes were cast in favor of the issuing of the bonds, the city or town council shall, at a regular or special meeting held within 30 days thereafter, pass a resolution providing for the issuance of the bonds.

(2) The resolution shall recite:

(a) the purpose for which the bonds are to be issued;

(b) the amount thereof;

(c) the maximum rate of interest the bonds may bear;

(d) the date they shall bear;

(e) the period of time through which they are payable; and

(f) that any bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued.

(3) The resolution shall provide for the manner of execution of the bonds. It shall provide that, *except in a bond issue of citizen bonds,* preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form. The council may in its discretion provide that such bonds may be issued and sold in two or more series or installments.

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(4) The resolution shall adopt a form of notice of the sale of the bonds."

Section 8. Section 7-7-4251, MCA, is amended to read:

"**7-7-4251. Form of notice of sale of bonds.** *(1)* The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of ...., Montana, that the council will, on the .... day of ...., 19.., at the hour of ... ...m., at its council chamber in the (city or town) of ...., Montana, sell to the highest and best bidder for cash either amortization or serial bonds of the said (city or town) in the total amount of .... dollars, ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds as the council may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each and will become due and payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the city or town council).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., will bear interest at a rate not exceeding ....% per annum commencing on the .... day of .... (month), 19.., and payable semiannually on the .... day of .... and on the .... day of .... in each year thereafter and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

Said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of .... and delivered to the clerk of said (city or town).

.....
Mayor of the (city or town) of
....., Montana

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ATTEST:

.....
(City or Town) Clerk

*(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to [sections 1 through 3].*"

Section 9. Section 7-7-4261, MCA, is amended to read:

"**7-7-4261. Maintenance of accounts for bond issues.** (1) The city treasurer or town clerk shall keep in his books a special and separate sinking fund account for each issue or series of outstanding bonds, *including citizen bonds as provided in [sections 1 through 4]*, issued by his city or town. Each such fund must at all times show the exact condition thereof.

(2) All taxes collected for interest and principal on city or town bonds shall be placed to the credit of the sinking fund for which the taxes were levied.

(3) The sinking fund shall be administered as provided in 7-7-123, 7-7-124, and 7-7-4270."

Section 10. Section 7-7-4265, MCA, is amended to read:

"**7-7-4265. Tax levy for payment of bonds.** (1) The city or town council, at the time of making the levy of taxes for general city or town purposes, must levy a separate and special tax upon all taxable property in the city or town for the payment of interest and principal for each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from the levy for any other issue or series of bonds.

(2) *Except as provided in subsection (3), the* levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of the bonds as will become due and payable during the then-current fiscal year or within 90 days thereafter, as such amount is shown by the treasurer's statement provided for by 7-7-4264. If no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within 90 days thereafter and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which the series or issue of bonds were originally issued by the number of years for which such series or issue of bonds were originally issued to run, as such amounts are shown by the treasurer's statement provided for by 7-7-4264.

*(3) The annual levies made for the purpose of paying off bonds that provide for no periodic interest payments but rather are sold at a discount from their face value, as provided in [sections 1 through 4], must be actuarially sufficient so that at the time for redemption there is an amount in the sinking fund sufficient to redeem the bonds.*"

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Section 11. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 7, part 42, and the provisions of Title 7, chapter 7, part 42, apply to [sections 1 through 4].

Section 12. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1989.

# CHAPTER NO. 512

[HB 655]

AN ACT PROVIDING FOR THE ADMINISTRATION AND REGULATION OF FLOATING, CAMPING, AND RECREATIONAL USE OF A PORTION OF THE SMITH RIVER WATERWAY; PROVIDING FOR ADOPTION OF RULES REGULATING RECREATIONAL USE; PROVIDING FOR PROTECTION OF LANDOWNER PROPERTY RIGHTS AND WATER RIGHTS; ALLOWING FOR USER FEES BY RULE AND ALLOCATING THE FEES; PROVIDING A PENALTY FOR VIOLATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted to the fish and game commission in [section 6] for the administration of the Smith River waterway. The grant of rulemaking authority is described in detail in [section 6]. The authority of the commission to regulate recreational and commercial use and minimize conflicts for the protection of the water and canyon resources of the Smith River is through the rulemaking process.

The legislature intends that the fish and game commission adopt rules regulating use as the need for restrictions is created by increased recreational use. The commission will have time to carefully develop rules balancing all interests after providing opportunity for public input and discussion.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Smith River Management Act".

Section 2. **Purpose — intent.** (1) The purpose of [this act] is to:

(a) provide continued recreational and commercial use and enjoyment of the Smith River waterway, consistent with the river's capacity;

(b) seek ways to minimize conflicts between river users and private landowners; and

(c) protect the integrity of the river's water and canyon resources for future generations.

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(2) The intent of [this act] is to interpret and implement [this act] in a manner consistent with the statement of purpose for the state park system in 23-1-101.

(3) Nothing in [this act] may be construed in any way to restrict a landowner's access to or use of his land, improvements, water rights, or adjacent waterways.

Section 3. **Definitions.** As used in [this act], the following definitions apply:

(1) "Commission" means the fish and game commission provided for in 2-15-3402.

(2) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

Section 4. **Applicability.** [This act] applies to that portion of the Smith River waterway located in Meagher and Cascade Counties lying between the Camp Baker state fisning access site in Meagher County and the confluence of the Smith River with the Missouri River. This description does not prevent the department from naming or renaming areas pursuant to 23-1-102.

Section 5. **Management responsibility and plan.** The department has the primary recreational management responsibility for the Smith River waterway described in [section 4], consistent with the purpose stated in 23-1-101 and [section 2]. The Smith River waterway must be administered to:

(1) allow the continuation of compatible existing recreational and public land uses;

(2) maintain the opportunity to enjoy the natural scenic beauty and solitude; and

(3) conserve fish and wildlife and scientific and recreational values.

Section 6. **Rulemaking authority.** The commission has authority to provide for the administration of the Smith River waterway. The commission may adopt rules to:

(1) regulate and allocate recreational and commercial floating and camping to preserve the biological and social benefits of recreational and commercial use of the Smith River waterway in its natural state. Recreational use may be restricted to preserve the experience of floating, fishing, and camping in a natural environment and to protect the river's fish, wildlife, water, and canyon resources. The restrictions must:

(a) consider the tolerance of adjacent landowners to recreational use;

(b) consider the capability of the river and adjoining lands to accommodate floating and camping use; and

(c) ensure an acceptable level of user satisfaction, including minimizing user conflicts and providing for a level of solitude.

(2) restrict recreational use, if necessary, through the implementation of a permit system. An allocation of a portion of the permits may be made

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to licensed outfitters to preserve the availability of outfitting services to the public.

(3) regulate the activities of recreational and commercial users of the water and land in the Smith River waterway that are legally accessible to the public and regulate the land in the river corridor that is under the control of the department and commission:

(a) for the purposes of safety, health, and protection of property;

(b) to preserve the experience of floating, fishing, and camping in a natural environment;

(c) to protect the river's fish, wildlife, water, and canyon resources; and

(d) to minimize conflicts between recreationists and private landowners; and

(4) establish recreational and commercial user fees for floating and camping on the Smith River waterway.

Section 7. **Allocation of user fees.** All money collected as recreational and commercial user fees for floating and camping on the Smith River waterway pursuant to [section 6] must be deposited in the state treasury in a state revenue fund to the credit of the department.

Section 8. **Penalty.** A person who violates a rule of the commission adopted pursuant to [this act] is guilty of a misdemeanor punishable by a fine of not less than $50 or more than $500, by imprisonment in a county jail for not more than 6 months, or by both fine and imprisonment.

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1989.

# CHAPTER NO. 513

[HB 657]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE CONTROL OF TIMBER SLASH AND DEBRIS; AMENDING SECTIONS 76-13-401 THROUGH 76-13-403, 76-13-405 THROUGH 76-13-411, AND 76-13-413, MCA; REPEALING SECTION 76-13-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-13-401, MCA, is amended to read:

**"76-13-401. Definitions.** As used in this part, the following definitions apply:

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(1) "Board" means the board of land commissioners provided for in Article X, *section* 4, of the Montana Constitution.

*(2) "Certification of clearance" means a certification issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.*

*(3) "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.*

*(4)* "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

*(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.*

*(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management.*

*(7) "Fire hazard reduction or management" means the abatement of a fire hazard by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.*

*(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.*

*(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting operations of sufficient number and size to warrant covering these operations under a single agreement and a single bond.*

*(10)* "Person" means an individual, association, partnership, corporation, estate, or any other entity.

*(11) "Purchaser" means a person who purchases or contracts to purchase any forest products cut from private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area."*

Section 2. Section 76-13-402, MCA, is amended to read:

**"76-13-402. Basis for management of fire hazards.** The *fire hazard* reduction or management referred to in this part shall be carried on by the department in keeping with modern and progressive forest practices and effective *forest* fire *protection* and may include but is not limited to the taking of protective measures to prevent injury or the destruction of forest resources without actual abatement of the hazard."

Section 3. Section 76-13-403, MCA, is amended to read:

**"76-13-403. Supervision by department.** The department, under rules *adopted by* the board, may supervise and inspect the *fire hazard*

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reduction or management of *all* fire *hazards* created by *forest products harvesting, timber stand improvement, and right-of-way clearing* on private land in the state."

Section 4. Section 76-13-405, MCA, is amended to read:

**"76-13-405. Contracts with forest fire protection agencies.** The department is authorized to enter into contracts with forest *fire protection* agencies, including agencies of the United States, for *fire hazard* reduction or management when in its opinion the work can best be accomplished in that manner."

Section 5. Section 76-13-406, MCA, is amended to read:

**"76-13-406. Limitation on liability.** The department and *other* recognized forest *fire protection* agencies, including any agency of the United States, with which the department has entered into an agreement for *fire hazard* reduction or management as provided in 76-13-405 and any officer, official, *or employee of the department or other recognized forest fire protection agency is* not liable for any damage to the land, product, improvement, or other things of value upon the lands on which the fire hazards are being managed or reduced in accordance with provisions of *this part, the rules adopted under 76-13-403, and the fire hazard reduction agreement* when *reasonable* care and caution has been used and *the* work is being or has been performed in compliance with the rules provided in 76-13-403."

Section 6. Section 76-13-407, MCA, is amended to read:

**"76-13-407. Reduction of slash and debris along right-of-way.** (1) A person clearing right-of-way for any railroad, public highway, public trail, private road, trail, ditch, dike, pipeline or wire lines, or any other transmission or transportation utility right-of-way, except temporary roads located within the boundaries of the cutting area and which are used in the actual logging operations, shall reduce the hazard resulting from the clearing or from the cutting of material for the construction of the public or private utility unless exempted by the department. At least 10 days before commencement of the clearing, the person conducting the clearing shall notify the department of commencement of the clearing in the form and manner the department provides.

(2) Hazard reduction, *excluding* burning where this method is used, shall be done as rapidly as cutting or clearing progresses.

(3) This section applies to all clearing of rights-of-way across private land and on behalf of the state, county, highway districts, and road districts, whether the work is done by day labor or by contract, and unless unavoidable emergency prevents, provision shall be made by the proper officials conducting, directing, or letting the work for withholding until it is complete a sufficient portion of the payment to assure compliance with this part."

Section 7. Section 76-13-408, MCA, is amended to read:

**"76-13-408. Fire hazard reduction agreement and bond.** (1) Before cutting any forest product, *constructing or reconstructing any road*

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*in contemplation of cutting any forest product,* or conducting timber stand improvement such as but not limited to thinning, weeding, or pruning upon private lands within the state, the person conducting *the work* shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement *or a master fire hazard reduction agreement* with the department, *providing for the* full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire hazard in the manner prescribed by law and by rules adopted by the board.

*(2) Either the person conducting the work or the purchaser as provided in 76-13-409(2) shall post a bond to the state in a form and for an amount as may be prescribed by the department, but the amount may not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut.*

*(3) The agreement must provide that:*

*(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and*

*(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted by the board.*

*(4)* The bond *must* be released upon *the issuance of the certificate of clearance.*"

Section 8. Section 76-13-409, MCA, is amended to read:

**"76-13-409. Duty of purchaser to ensure compliance — statement — bond.** (1) The initial purchaser of forest products which have been cut or are about to be cut from any private lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products has provided for the reduction or management of the fire hazard *by entering into a fire hazard reduction agreement as provided in 76-13-408.*

(2) *The* purchaser shall withhold *sufficient money to meet the requirements of the bond provided for in 76-13-408 plus the fees for administration, inspection, and enforcement by the department as provided in the hazard reduction agreement. The* purchaser shall transmit all *money and fees that* are withheld *and a report of volumes of products purchased* to the department on or before the 15th day of *the following* month, clearly identifying by number the *fire* hazard reduction agreement to which the withheld *money, fees, and product volumes* pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

*(3) If forest products are not received or purchased in a given month, a report showing a zero balance and stating that products were not purchased must be submitted to the department.*

*(4) The department may require the purchaser to post a bond to the state in a form and for an amount as may be prescribed by the department to ensure faithful compliance with this part.*"

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Section 9. Section 76-13-410, MCA, is amended to read:

**"76-13-410. Failure to comply.** (1) If a person fails, refuses, or neglects to properly *reduce or manage the fire hazard* in accordance with the requirements of 76-13-407 and 76-13-408, he may be enjoined from further *cutting, clearing, and construction* operations until 76-13-407 and 76-13-408 have been complied with. The department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings shall be conducted in the district court of the county where the land is located.

(2) If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the *fire hazard reduction or management* at the expense *of the contractor or* of the owner of the timber or other forest products cut or produced from the land upon which the *unabated* fire hazard remains.

(3) The cost and expense of the *fire hazard reduction or management work*, plus 20% of the cost and expense of *the work* as a penalty, constitutes a lien upon the forest products cut or produced from the land *and upon the real and personal property of the contractor.* If payment of the sum demanded is not made to the department within 10 days of its written demand, the department shall bring legal action on behalf of the state to recover the debt."

Section 10. Section 76-13-411, MCA, is amended to read:

**"76-13-411. Certification of clearance.** *When the department makes a determination of faithful compliance by the contractor with this part, the rules adopted under 76-13-403, and the hazard reduction agreement, the contractor must be issued a certification of clearance by the department and be relieved of any further liability or responsibility for fire hazard reduction or management under the fire hazard reduction agreement.*"

Section 11. Section 76-13-413, MCA, is amended to read:

**"76-13-413. Failure to submit withholding — remedy.** (1) If a purchaser does not submit withheld money *and required reports* on or before the 15th day of *the following* month *as provided in* 76-13-409, he must be notified by certified mail that he is in noncompliance and be given 15 days to submit all money *and reports* then due. If he fails to submit all money due within the required time, the department *may initiate a lien upon the real property of the purchaser and* may initiate proceedings to enjoin further processing of all wood products until all money due is paid in full *and all required reports are submitted.*

(2) If payment *and reports are not received by the department* within the 15-day period after notification as provided in subsection (1), a penalty of 5% of the *payment* amount due must be assessed. The department may abate the penalty if the purchaser establishes that the failure to submit the amount due *or the reports* as required was due to reasonable cause and was not due to neglect on his part. The department, in addition to the penalty,

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may impose interest at the rate of 10% a year on any balance remaining unpaid.

*(3) All money withheld by a purchaser for the contractor's bond and for department fees are considered to be excise taxes withheld for the benefit of the state within the meaning of 11 U.S.C. 507."*

Section 12. **Fees.** (1) In addition to any bond, the department shall charge the contractor fees for administration, inspections, and enforcement work conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is $25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) must be charged or an equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding 500,000 board feet per agreement in a calendar year must be returned to the contractor by the department.

(3) Fees for master fire reduction agreements must be equal to 100% of the department's actual costs incurred in the administration, inspection, and enforcement of each agreement, and the department shall bill the contractor annually to collect such fees.

Section 13. **Repealer.** Section 76-13-404, MCA, is repealed.

Section 14. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 15. **Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 76, chapter 13, part 4, and the provisions of Title 76, chapter 13, part 4, apply to [section 12].

Section 16. **Effective date.** [This act] is effective July 1, 1989.

Approved April 12, 1989.

# CHAPTER NO. 514

[HB 682]

AN ACT PROVIDING FOR THE APPOINTMENT OF TWO TENANTS OF EACH HOUSING AUTHORITY AS HOUSING AUTHORITY COMMISSIONERS; AND AMENDING SECTIONS 7-15-4406, 7-15-4431, 7-15-4432, 7-15-4435, AND 7-15-4439, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-15-4406, MCA, is amended to read:

**"7-15-4406. Decision of city council.** (1) After *the* hearing, the council shall determine:

(a) whether unsanitary or unsafe inhabited dwelling accommodations exist in the city and *the* surrounding area; and/or

(b) whether there is a lack of safe or sanitary dwelling accommodations in the city and *the* surrounding area available for all the inhabitants thereof.

(2) If it *determines* that either or both of the above-enumerated conditions exist, the council *shall* draft an ordinance authorizing the mayor to appoint *seven* commissioners to act as an authority.

(3) If the council, after a hearing, *determines* that neither of the above-enumerated conditions exist, it shall adopt a resolution denying the petition. After 3 months have expired from the date of the denial of *a* petition, subsequent petitions may be filed and new hearings and determinations made *on the petitions.*"

Section 2. Section 7-15-4431, MCA, is amended to read:

"**7-15-4431. Appointment of commissioners.** (1) An authority *consists* of *seven* commissioners appointed by the mayor, and he shall designate the first chairman. *A* commissioner may *not* be a city official.

*(2) Two of the commissioners must be tenants of the housing authority. One tenant commissioner shall represent family tenants and one tenant commissioner shall represent elderly and handicapped tenants. Nominees for tenant commissioner shall submit to the city clerk a petition signed by not less than 25 adult tenants of the authority or 25% of the adult tenants of the authority, whichever is greater. The city clerk shall submit a list of the tenant nominees to the mayor for appointment to the housing authority. The staff of the housing authority may not involve itself in the nomination or appointment of tenant commissioners.*

*(3)* The mayor shall file with the city clerk a certificate of the appointment or reappointment of any commissioner, and *the* certificate *is* conclusive evidence of the due and proper appointment of *the* commissioner."

Section 3. Section 7-15-4432, MCA, is amended to read:

"**7-15-4432. Term of office.** (1) The commissioners who are first appointed *must* be designated by the mayor to serve for terms of 1, 2, 3, 4, and 5 years, respectively, from the date of their appointment. Thereafter the term of office *is* 5 years.

*(2) The tenant commissioners who are first appointed shall serve for terms of 1 and 2 years, respectively, from the date of their appointment. Thereafter the term of office is 2 years.*

*(3)* A commissioner shall hold office until his successor has been appointed and qualified."

Section 4. Section 7-15-4435, MCA, is amended to read:

"**7-15-4435. Control of conflict of interest.** (1) *Except as provided in 7-15-4431, a* commissioner or employee of an authority *may not* acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project. *A commissioner may not*

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have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project.

(2) (a) If *a* commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the *interest* in writing to the authority, and *the* disclosure *must* be entered upon the minutes of the authority.

(b) Failure to disclose *an* interest *constitutes* misconduct in office."

Section 5. Section 7-15-4439, MCA, is amended to read:

**"7-15-4439. Conduct of business.** (1) *A simple majority of* commissioners *constitutes* a quorum.

(2) When the office of the first chairman of the authority becomes vacant, the authority shall select a chairman from among its members. An authority shall select from among its members a vice-chairman.

(3) An authority may:

(a) employ a secretary (who shall be executive director), technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation;

(b) call upon the corporation counsel or chief law officer of the city for legal services as it may require or employ its own counsel and legal staff;

(c) delegate to one or more of its agents or employees powers or duties as it may *consider* proper."

Approved April 12, 1989.

# CHAPTER NO. 515

[HB 720]

AN ACT TO REQUIRE A SOCIAL AND ECONOMIC IMPACT ANALYSIS OF ANY WILDLIFE HABITAT ACQUISITION BY THE FISH AND GAME COMMISSION; AMENDING SECTION 87-1-241, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-241, MCA, is amended to read:

**"87-1-241. (Effective March 1, 1988, to March 1, 1994) Acquisition of wildlife habitat — rules.** (1) Before acquisition of any interest in land for the primary purpose of securing wildlife habitat the commission shall by rule establish a policy for making such acquisitions.

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With regard to any specific acquisition the policy shall provide for a comprehensive analysis of:

(a) the wildlife populations and use currently associated with the property;

(b) the potential value of the land for protection, preservation, and propagation of wildlife;

(c) management goals proposed for the land and wildlife populations, and where feasible, any additional uses of the land such as livestock grazing or timber harvest;

(d) any potential impacts to adjacent private land resulting from proposed management goals, and plans to address such impacts;

*(e) any significant potential social and economic impacts to affected local governments and the state, including but not limited to impacts on:*

*(i) tax revenue available for the operation of taxing jurisdictions within the county;*

*(ii) services required to be provided by local governments;*

*(iii) employment opportunities within the counties;*

*(iv) local schools; and*

*(v) private businesses supplying goods and services to the community;*

*(f)* a land maintenance program to control weeds and maintain roads and fences; and

*(g)* any other matter considered necessary or appropriate by the commission.

(2) The analysis made of any proposed acquisition must be made available for review by each owner of land adjacent to the property that is the subject of analysis, and to any member of the public. A public hearing must be held in the affected area after the analysis has been made available to the public. **(Terminates March 1, 1994—sec. 12, Ch. 598, L. 1987.)"**

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1989.

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# CHAPTER NO. 516

[HB 727]

AN ACT REDEFINING "MONITORING WELL"; REQUIRING THE BOARD OF WATER WELL CONTRACTORS TO ADOPT MINIMUM STANDARDS FOR MONITORING WELL CONSTRUCTION, USE, AND ABANDONMENT; REQUIRING CERTAIN PERSONS TO HAVE A SEPARATE LICENSE TO INSTALL MONITORING WELLS; ALLOWING EDUCATION OR EXPERIENCE TO SUBSTITUTE FOR AN APPRENTICESHIP FOR THE PURPOSE OF OBTAINING A WATER WELL CONTRACTOR'S LICENSE, WATER WELL DRILLER'S LICENSE, OR MONITORING WELL CONSTRUCTOR'S LICENSE; MODIFYING THE BOND REQUIREMENT; APPLYING THE RECIPROCITY LAW TO OUT-OF-STATE LICENSED MONITORING WELL CONSTRUCTORS; AMENDING SECTIONS 37-43-102, 37-43-202, 37-43-302, 37-43-305, 37-43-306, AND 37-43-308, MCA; REPEALING SECTION 16, CHAPTER 538, LAWS OF 1987; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-43-102, MCA, is amended to read:

**"37-43-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and performs labor and services for a licensed water well contractor and whose duties are directly related to well drilling or drilling rig operation.

(2) "Board" means the board of water well contractors provided for in 2-15-3307.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

*(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.*

*(5)* "Monitoring well" means a well that is used for *pollutant recovery or* monitoring groundwater quality, *groundwater levels,* or flow direction, but *whose primary purpose is not the withdrawal or acquisition of groundwater. Monitoring well does not include geotechnical borings, perk test holes, and groundwater exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.*

*(6)* "Monitoring well constructor" means a natural person who *installs* monitoring wells.

*(7)* "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the

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location, diversion, artificial recharge, or acquisition of groundwater. The term does not include spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

*(8)* "Water well contractor" or "contractor" means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other than his own for compensation.

*(9)* "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated."

Section 2. **Initial licensing as a monitoring well constructor.** (1) An applicant who submits an application for a monitoring well constructor's license before December 31, 1989, shall receive a license if the applicant:

(a) provides verification of 1 or more years' experience in installing monitoring wells within the 4 years preceding the application;

(b) pays a fee prescribed by the board of water well contractors in 37-43-303; and

(c) provides a bond in compliance with 37-43-306.

(2) A licensed water well contractor is not required to obtain a separate license to install monitoring wells, but shall meet the requirements of subsections (1)(b) and (1)(c) before being authorized to proceed with monitoring well installation.

Section 3. Section 37-43-202, MCA, is amended to read:

**"37-43-202. Powers and duties.** (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) The board shall adopt *minimum standards* regarding the construction, use, and abandonment of monitoring wells. *The standards must be*

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*designed to protect the state's ground water resource from degradation by contamination and loss of hydrostatic pressure. A violation of the standards does not occur if it can be shown that noncompliance results in equal or greater protection of the ground water resource.*

(5) The board may request the department to inspect water wells *or monitoring wells* drilled or being drilled, and the department has access to these *wells* at reasonable times.

(6) The board may establish a program for training apprentices and licensed or prospective water well contractors, water well drillers, and monitoring well constructors to more effectively carry out this chapter.

(7) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers, water well contractors, and monitoring well constructors.

(8) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(9) The rules of the board *must* be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales *must* be deposited in the state special revenue fund for the use of the board.

(10) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors, water well drillers, and monitoring well constructors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) deny, revoke, or suspend licenses for good cause, after notice and opportunity to be heard;

(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and

(e) generally perform duties which will carry out this chapter.

(11) The board shall pay to the department its share of the assessed costs of the department in administering this chapter."

Section 4. Section 37-43-302, MCA, is amended to read:

**"37-43-302. License required.** (1) The drilling, making, or construction of water wells and monitoring wells is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any water well contractor, water well driller, or monitoring well constructor as defined in this chapter, to construct, alter, or rehabilitate a water well or a monitoring well without first having obtained a valid license therefor as provided

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for in this chapter. An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well *or a separate license to install monitoring wells.*

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well on land that is owned or leased by him, provided:

(i) the land is used by him for farming, ranching, or agricultural purposes or as his residence;

(ii) the person obtains a permit from the board; and

(iii) the construction of the well conforms to the minimum construction standards for water or monitoring wells set by board rule; or

(b) an apprentice water well driller who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name, mailing address, the location of the proposed well, the nature of the applicant's ownership interest in the property on which the well is to be located, the construction or installation method to be used, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that:

(i) the well is located on land that the applicant owns or leases and that he uses for farming, ranching, or agricultural purposes or as his residence; and

(ii) the construction or installation method to be used meets the minimum standards for water wells *or monitoring wells* set by board rule."

Section 5. Section 37-43-305, MCA, is amended to read:

**"37-43-305. Examination and qualifications.** (1) Under board rules pertaining to the business of drilling and contracting for drilling of water wells and monitoring wells, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications for a water well contractor's license are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

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(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor *or equivalent education, experience, or both, as determined by the board.*

(3) The qualifications for a water well driller's license are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and water well construction;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) employment by a licensed water well contractor;

(f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or driller *or equivalent education, experience or both, as determined by the board*; and

(g) successful completion of an examination given by the department.

(4) The qualifications for a license to construct monitoring wells are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for drilling and construction of monitoring wells;

(b) knowledge of types of monitoring well construction;

(c) knowledge of types of drilling tools used for monitoring wells and their uses;

(d) knowledge of geology;

(e) financial responsibility of the applicant;

(f) 1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor *or equivalent education, experience, or both, as determined by the board*; and

(g) successful completion of an examination related specifically to drilling of monitoring wells given by the department.

(5) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee."

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Section 6. Section 37-43-306, MCA, is amended to read:

"**37-43-306. Bond to be required.** (1) The department, on issuance of a water well contractor's or monitoring well constructor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of $4,000, conditioned that the licensee will comply with the rules of the board.

(2) A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for $4,000.

*(3) A state or federal employee who is bonded by the state or federal government is not required to supply a bond during the course of his employment with the state or federal government. A bond is required if the person ceases government employment.*

*(4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having more than two licensed water well contractors or monitoring well constructors may submit one bond in the amount of $10,000 for the entire firm, corporation, or partnership.*"

Section 7. Section 37-43-308, MCA, is amended to read:

"**37-43-308. Reciprocity.** If a person holding a license entitling him to drill water wells *or monitoring wells* in another state applies for a Montana water well contractor's, water well driller's, *or monitoring well constructor's* license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells *or monitoring wells* in this state."

Section 8. **Repealer.** Section 16, chapter 538, Laws of 1987, MCA, is repealed.

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Applicability.** [This act] applies only to monitoring wells drilled on or after [the effective date of this act].

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1989.

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# CHAPTER NO. 517

[HB 736]

AN ACT TO PERMIT A PERSON TO REGISTER FLEET VEHICLES FOR A 6-MONTH PERIOD; AMENDING SECTIONS 61-3-313, 61-3-502, 61-3-504, AND 61-4-112, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Fleet registration period.** (1) (a) Notwithstanding any other provisions of this title regarding the registration of motor vehicles, a person owning or leasing a fleet may register its motor vehicles for a 6-month period, commencing from the date of original registration.

(b) A vehicle remaining in the fleet at the end of a 6-month period must be reregistered for a minimum of 12 months.

(2) As used in this section, "fleet" means more than 25 automobiles or trucks having a rated capacity of three-quarters of a ton or less that are rented or offered for rental without drivers and that are designated by a rental owner as a rental fleet.

Section 2. Section 61-3-313, MCA, is amended to read:

**"61-3-313. Vehicles subject to staggered registration.** For purposes of 61-3-313 through 61-3-316 "vehicle" means any motor vehicle as defined in 61-1-102 subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States, of the state of Montana, or its political subdivisions;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-411, 61-3-421, or 61-3-451;

(4) trucks exceeding a licensed gross vehicle weight of 10,000 pounds;

(5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

*(7) motor vehicles registered as part of a fleet under [section 1].*"

Section 3. Section 61-3-502, MCA, is amended to read:

**"61-3-502. Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax *must* be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) Except as provided in *subsections* (4) *and (5)*, the sales tax *is*:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

(d) ⅜ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

*(5) The sales tax on new motor vehicles registered as part of a fleet under [section 1] is ¾ of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.*

*(6)* The proceeds from this tax *must* be remitted to the state treasurer every 30 days for credit to the state highway account of the state special revenue fund.

*(7)* The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

*(8)* (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

*(9)* (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

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(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 4. Section 61-3-504, MCA, is amended to read:

**"61-3-504. Computation of tax.** (1) The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of three-quarters of a ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.

(2) The amount of tax on an automobile or truck having a rated capacity of three-quarters of a ton or less, except for vehicles owned by disabled veterans qualifying for special license plates under 61-3-451, and on a motorcycle or quadricycle is 2% of the value determined under 61-3-503.

*(3) The amount of tax on fleet vehicles subject to the provisions of [section 1] is 1% of the value determined under 61-3-503.*

*(4)* For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided therefor."

Section 5. Section 61-4-112, MCA, is amended to read:

**"61-4-112. New motor vehicles — transfers by dealers.** (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a sticker as prescribed in 61-4-111(1)(a) for transfers of used motor vehicles and retain a copy of the sticker;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the sticker issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a statement of origin as prescribed in 61-3-502*(8)(b)*.

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ownership and certificate of registration together with a statement of lien as provided in 61-3-202."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

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Section 7. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 3, and the provisions of Title 61, chapter 3, part 3, apply to [section 1].

Section 8. **Applicability.** [This act] applies to fleet vehicles registered after the effective date of [this act].

Section 9. **Effective date.** [This act] is effective July 1, 1989.

Approved April 12, 1989.

# CHAPTER NO. 518

[SB 38]

AN ACT REQUIRING THE DEPARTMENT OF INSTITUTIONS TO DEVELOP A COMPREHENSIVE PLAN FOR HOUSING ADULT FEMALE INMATES; REQUIRING THE DEPARTMENT TO SUBMIT THE PLAN TO THE 52ND LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the adult female inmate population in Montana has increased steadily since 1981; and

WHEREAS, the Women's Correctional Center, the main facility in Montana for housing female inmates, is a converted nurses' dormitory located on the campus of Montana State Hospital; and

WHEREAS, on several occasions this fiscal year, the Women's Correctional Center has exceeded its maximum capacity of 45 inmates; and

WHEREAS, physical expansion of the Women's Correctional Center is not possible.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Department of institutions to develop plan for housing female inmates.** (1) The department of institutions, in cooperation with the criminal justice and corrections advisory council, shall develop a comprehensive plan for housing adult female inmates. The plan must:

(a) consider the need for building a new correctional facility, as well as other incarceration alternatives;

(b) provide for adequate educational, treatment, training, and employment opportunities for female inmates;

(c) comply with the standards published by the American correctional association's commission on accreditation for corrections, whenever feasible; and

(d) contain proposed legislation for implementing the plan, if appropriate.

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(2) The department shall submit the plan to the 52nd legislature.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 13, 1989.

# CHAPTER NO. 519

[SB 113]

AN ACT TO IMPOSE A PENALTY FOR AIDING A RESIDENT'S FAILURE TO RETURN TO A YOUTH CORRECTIONAL FACILITY; AND AMENDING SECTION 53-30-215, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-30-215, MCA, is amended to read:

**"53-30-215. Penalty for aiding resident in leaving or not returning to a youth correctional facility.** *(1)* A person *is guilty of an offense if he purposely or knowingly:*

*(a)* permits or assists a resident of *a* youth correctional facility to leave a facility without permission;

*(b) permits or assists a resident's failure to return to a youth correctional facility from which he had permission to leave;*

*(c)* furnishes or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission *or to not return; or*

*(d)* harbors or conceals a resident who has left without permission.

*(2) Upon* conviction *of a violation of subsection (1), a person shall* be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding $1,000 or by both such fine and imprisonment."

Approved April 13, 1989.

# CHAPTER NO. 520

[SB 179]

AN ACT REVISING THE QUALIFICATIONS REQUIRED FOR LICENSURE AS A COSMETOLOGIST; REQUIRING 2 YEARS OF HIGH SCHOOL OR THE EQUIVALENT OF A HIGH SCHOOL DIPLOMA FOR LICENSURE; AND AMENDING SECTION 37-31-304, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-31-304, MCA, is amended to read:

**"37-31-304. Qualifications of applicants for license to practice.** (1) Before a person may practice cosmetology, he must obtain a license to

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practice cosmetology from the department. Before a person may practice manicuring, he must obtain a license to practice manicuring from the department unless he is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant must be not less than 18 years of age and of good moral character *and must have completed 2 years of high school or possess the equivalent of a high school diploma recognized by the superintendent of public instruction.* The applicant must have completed a continuous course of study of at least 2,000 hours in a registered beauty school, which course of study has been distributed over a period of not less than 10 months or more than 14 months, and must have received a diploma from the beauty school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant must be not less than 18 years of age, be of good moral character, possess a high school diploma, an equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical center program, and have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring.

(b) A person qualified under subsection (3)(a) must file with the department a written application to take the examination and deposit with the department the required examination fee."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 13, 1989.

# CHAPTER NO. 521

[SB 216]

AN ACT CLARIFYING THAT FIREFIGHTING VEHICLES ARE NOT COMMERCIAL VEHICLES; AMENDING SECTION 61-1-134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-1-134, MCA, is amended to read:

**"61-1-134. (Effective January 1, 1988) Commercial motor vehicle defined — exceptions.** (1) "Commercial motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

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(a) has a gross vehicle weight of 26,001 pounds or more;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used to transport hazardous material.

(2) *Commercial* motor vehicles under this section *do not include vehicles operated within the state of Montana that are:*

*(a) registered as paying the 16% gross weight fee under 61-10-206; or*

*(b) used for firefighting and that are bearing Montana tax-exempt plates."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 13, 1989.

# CHAPTER NO. 522

[SB 256]

AN ACT AUTHORIZING THE CREATION OF A COUNTY ROAD AND BRIDGE DEPRECIATION RESERVE FUND; PROVIDING FOR USE OF THE FUND; AND LIMITING THE AMOUNT OF THE FUND.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **County road and bridge depreciation reserve fund — limitation.** (1) The governing body of a county may establish a road and bridge depreciation reserve fund to be used for acquisition and replacement of property, capital improvements, and equipment necessary to maintain and improve county road and bridge facilities and services.

(2) Budgeted county road and bridge money that has not been expended or encumbered for a fiscal year may be deposited in the road and bridge depreciation reserve fund. The fund may not exceed $200,000.

(3) Money in the road and bridge depreciation reserve fund must be invested as provided by law. Interest and income from the investment of the road and bridge depreciation reserve fund must be credited to the fund.

Approved April 13, 1989.

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# CHAPTER NO. 523

[SB 284]

AN ACT PROHIBITING PERSONS NOT LICENSED AS DEALERS FROM ACTING AS DEALERS IN SALES OF MOTOR VEHICLES; AND AMENDING SECTIONS 61-4-101 AND 61-4-105, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-4-101, MCA, is amended to read:

**"61-4-101. Application for dealer's license.** (1) Every person, firm, corporation, or association which, for commission or profit, engages in the business of buying, selling, exchanging, *offering, taking for consignment, soliciting, advertising the sale of,* or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, or special mobile equipment as defined in 61-1-104 shall file, by mail or otherwise, in the office of the department a verified application for licensure as a dealer, on a blank to be furnished by the department for that purpose and containing the information required. The application and all of the information contained in it *must* be verified by the Montana highway patrol. Each application must be accompanied by the license fee specified *in 61-4-102.* A dealer's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department prior to the expiration of the license, the dealer may operate his business and display dealer plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

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(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates or as a recreational vehicle, trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates or as a motorcycle or quadricycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet indicating the firm name as the principal place of business and that vehicles are offered for sale; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license must also indicate on the same certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) To qualify for a used motor vehicle dealer's license, a person must submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(d) The provisions of subsection (2)(c) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of $5,000, and the bond *must* be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds run to the state of Montana, *must* be approved by the department and filed in its office, and *must* be renewed annually."

Section 2. **Exemptions.** (1) This part does not require licensure of, or restrict or prohibit a financial institution, as defined in 32-6-103:

(a) in the selling of collateral repossessed on default of a loan made by the financial institution;

(b) in the conduct of a motor vehicle sales promotion in affiliation with one or more licensed dealers; or

(c) in the conduct of a motor vehicle sales promotion in affiliation with a person regularly engaged in a bona fide vehicle rental business if the purpose of the sale is to dispose of used motor vehicles used in the rental business.

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(2) This part does not require licensure of an auctioneer whose business consists primarily of the sale of personal property other than motor vehicles.

Section 3. Section 61-4-105, MCA, is amended to read:

**"61-4-105. Criminal penalty — civil penalty imposed by agency.** (1) Any person violating the provisions of 61-4-101 through 61-4-104 *is* guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. For the purposes *of this section*, every sale of a motor vehicle in violation of the provisions of 61-4-101 through 61-4-104 *is* a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Any person violating the provisions of 61-4-101 through 61-4-104 may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

(a) a civil penalty not to exceed $200 for each violation;

(b) suspension of the motor vehicle dealer license not to exceed 5 working days;

(c) revocation or denial of the motor vehicle dealer license; or

(d) any combination of subsections (2)(a) through (2)(c)."

Section 4. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [section 2].

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 13, 1989.

## CHAPTER NO. 524

[SB 390]

AN ACT ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ISSUE AN INTERIM PERMIT FOR A PERIOD ENDING NO LATER THAN SEPTEMBER 30, 1991, TO APPROPRIATE GROUND WATER UP TO 6,000 ACRE-FEET PER YEAR FROM ABANDONED COAL MINES IN MUSSELSHELL COUNTY.

WHEREAS, agricultural and stockwater users in Musselshell County are experiencing water shortages during periods of low flow in the Musselshell River; and

WHEREAS, alternatives for additional water supplies, such as off-stream reservoir storage, would be very costly; and

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WHEREAS, abandoned coal mines near Roundup could provide substantial supplemental water; and

WHEREAS, the 50th Montana Legislature authorized the Department of Natural Resources and Conservation to issue an interim permit to the Deadman Basin Water Users Association to appropriate ground water in the mines; and

WHEREAS, the Department of Natural Resources and Conservation is preparing to issue an interim permit to the Deadman Basin Water Users Association for a small test withdrawal, after a thorough review of the project for any environmental effects; and

WHEREAS, the best interests of people in the Roundup area will be served by a credible and technically sound evaluation of whether the coal mines can provide significant supplemental water supplies without significant adverse environmental effects and without harm to other existing appropriators; and

WHEREAS, test appropriations proposed during the summers of 1990 and 1991 will require an interim permit for an amount exceeding 3,000 acre-feet per year, thereby requiring legislative approval pursuant to section 85-2-317, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Authorization to issue interim permit to appropriate ground water.** Pursuant to 85-2-317(1), the department of natural resources and conservation may authorize an interim permit for a period ending no later than September 30, 1991, to the Deadman Basin water users association to appropriate ground water up to 6,000 acre-feet per year from abandoned coal mines in Musselshell County. The application and interim permit are subject to the remaining provisions of Title 85, chapter 2, part 3.

Approved April 13, 1989.

# CHAPTER NO. 525

[SB 392]

AN ACT TO EXEMPT FROM PROPERTY TAXATION CERTAIN PROPERTY USED EXCLUSIVELY IN THE PRODUCTION OF MOTION PICTURES OR TELEVISION COMMERCIALS; AMENDING SECTIONS 61-3-301, 61-3-503, 61-3-506, AND 61-3-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules

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adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property.

WHEREAS, Montana has abundant scenery, resources, and accommodations that are uniquely suited to the filming of motion pictures and television commercials; and

WHEREAS, the motion picture industry and the television commercial filming industry are increasingly recognizing Montana's intrinsic beauty and character that enhance the products produced by both industries; and

WHEREAS, the State of Montana and her citizens welcome the filming industry to this beautiful state.

THEREFORE, the Legislature of the State of Montana finds it appropriate to extend the state's inherent hospitality to these industries by exempting from taxation certain property used in the production of motion pictures and television commercials.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Exemption for motion picture and television commercial property.** Except as provided in [sections 2 and 3], all property, including vehicles, brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from property taxation, provided that the property does not remain in the state for a period in excess of 180 consecutive days in a calendar year.

Section 2. **Taxation of motion picture and television commercial property.** Except as provided in [section 3], property used exclusively for filming motion pictures or television commercials and that remains in the state for a period exceeding 180 consecutive days in a calendar year is subject to assessment and taxation as all other property subject to property taxation.

Section 3. **Taxation of vehicles used exclusively in filming motion pictures or television commercials.** (1) A vehicle used exclusively in the filming of motion pictures or television commercials that has been in the state for a period exceeding 180 consecutive days in a calendar year must be assessed as if the vehicle were not used exclusively for filming motion pictures or television commercials, but the assessment must be prorated as provided in subsection (2).

(2) The taxes assessed under subsection (1) must be prorated by dividing the number of days in excess of 180 consecutive days in the calendar year by 365.

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(3) Taxes on a vehicle imposed pursuant to this section must be collected as provided in Title 15, chapter 16, part 1, for the collection of personal property taxes generally.

Section 4. Section 61-3-301, MCA, is amended to read:

**"61-3-301. Registration — license plate required — display.** (1) Except as otherwise provided *in this section, a* person *may not* operate a motor vehicle upon the public highways of this state unless *the* vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that trailers, semitrailers, quadricycles, and motorcycles shall have but one number plate conspicuously displayed on the rear. *A* person *may not* display on *the* vehicle at the same time any number assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, *chapter 10, part 5,* being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) *A* person *may not* purchase or display on a vehicle any license plate bearing the number assigned to any county as provided in 61-3-332 other than the county of his permanent residence at the time of application for registration. However, the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application *for registration* in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to *the* county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, or to repaint old license plates to resemble current license plates.

*(4) This section does not apply to a vehicle exempt from taxation under [section 1] or subject to taxation under [section 3].*

*(5)* Any person violating these provisions is guilty of a misdemeanor and subject to the penalty set out in 61-3-601."

Section 5. Section 61-3-503, MCA, is amended to read:

**"61-3-503. Assessment.** (1) Except as provided in *[section 3] and* subsection (2) *of this section,* the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing *the* application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law

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for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. *A* motor vehicle *is not* subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or, for vehicles not listed in the preceding guides, the low value listed in The Value Guide to Cars of Particular Interest, not including additions or deductions for options and mileage; and a lien for taxes and fees due *on the vehicle* shall occur on the anniversary date of the registration and shall continue until *the* fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $1,000, the department shall value the vehicle at $1,000.

(d) Motorcycles and quadricycles shall be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value shall remain at that minimum so long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is

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attained, and the value shall remain at that amount so long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1)."

Section 6. Section 61-3-506, MCA, is amended to read:

"**61-3-506. Rules.** The department of revenue shall adopt rules for the payment of property taxes and the department of highways shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, *and [section 3]*. The department of revenue may adopt rules for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316, 61-3-501, *and [section 3]*, but shall specifically provide that new car taxes shall be for a 12-month period."

Section 7. Section 61-3-507, MCA, is amended to read:

"**61-3-507. Exemption.** *(1) A motor vehicle* subject to anniversary date registration as provided in 61-3-313 through 61-3-316 *is* exempt from the provisions of 61-3-503(1)(b) and 61-3-505.

*(2) A vehicle exempt from taxation under [section 1] or subject to the provisions of [section 3] is exempt from all other taxes and fees generally imposed on a vehicle by this part.*"

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 24, part 3, and the provisions of Title 15, chapter 24, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, apply to [section 3].

Section 10. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Section 11. **Termination.** [This act] terminates December 31, 1993.

Approved April 13, 1989.

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# CHAPTER NO. 526

[SB 413]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO REGULATE THE ACTIVITIES OF PAWNBROKERS LOCATED OUTSIDE THE BOUNDARIES OF AN INCORPORATED CITY OR TOWN.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Regulation of pawnbrokers — definition.** (1) The board of county commissioners may, by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107, regulate the activities of pawnbrokers located outside the boundaries of an incorporated city or town. The regulations may include but are not limited to:

(a) standards for recordkeeping for all pawns, purchases, and sales;

(b) a provision for a waiting period to allow investigators time to examine merchandise;

(c) required forms of identification needed by persons pledging or selling articles; and

(d) penalty provisions for pawnbrokers who fail to comply with the regulations.

(2) For the purpose of this section, "pawnbroker" means a person engaged in conducting or carrying on the business of loaning money for himself or for another, upon personal property, personal security, pawns, or pledges, or engaged in the business of purchasing articles of personal property and reselling or agreeing to resell the articles to the vendors or their assigns at prices agreed on at or before the time of purchase.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 21, part 22, and the provisions of Title 7, chapter 21, part 22, apply to [section 1].

Approved April 13, 1989.

# CHAPTER NO. 527

[HB 73]

AN ACT TO ALLOW SUPERINTENDENTS OF YOUTH CORRECTIONAL FACILITIES OR THEIR DESIGNEES TO CONSENT TO EMERGENCY MEDICAL TREATMENT FOR RESIDENTS; AMENDING SECTION 53-30-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-30-206, MCA, is amended to read:

**"53-30-206. Superintendents to manage facilities.** Each facility provided for herein shall be under the immediate management and control

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of a superintendent. *If the parent or legal guardian of a resident of a facility cannot be located, the superintendent or his designee may consent to emergency medical treatment for the resident of the facility under his management and control.*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 13, 1989.

# CHAPTER NO. 528

[HB 603]

AN ACT PROVIDING FOR REIMBURSEMENT TO OWNERS AND OPERATORS OF PETROLEUM STORAGE TANKS FOR EXPENSES RELATED TO RELEASES FROM THOSE TANKS; ESTABLISHING A PETROLEUM STORAGE TANK CLEANUP FEE TO BE PAID BY GASOLINE DISTRIBUTORS AND COLLECTED BY THE DEPARTMENT OF REVENUE; CREATING A PETROLEUM TANK RELEASE CLEANUP FUND AND STATUTORILY APPROPRIATING MONEY IN THE FUND; CREATING A PETROLEUM TANK RELEASE COMPENSATION BOARD; PROVIDING CRIMINAL PENALTIES FOR CERTAIN MISREPRESENTATIONS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

(1) It is the intent of the legislature that the petroleum tank release compensation board enact rules that:

(a) govern submission of claims by owners or operators to the department and board;

(b) provide procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) provide procedures for the review and approval of corrective action plans;

(d) provide procedures for conducting board meetings, hearings, and other business that are necessary for the implementation of [sections 1 through 7 and 9 through 12]; and

(e) are necessary for the administration of [sections 1 through 7 and 9 through 12], provided that the rules do not alter or conflict with the eligibility requirements and procedures provided in [sections 1 through 7 and 9 through 12] or with the laws, rules, or procedures of the federal government or the department of health and environmental sciences that govern releases from petroleum storage tanks.

(2) The department of health and environmental sciences may adopt rules necessary to administer its responsibilities under [sections 1 through

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7 and 9 through 12], including requirements for approval of corrective action plans.

(3) The department of revenue shall adopt rules governing the collection of the petroleum storage tank cleanup fee provided for in [section 7]. The rules may include reporting and recordkeeping requirements, method and timing of payment, examination of records, and other provisions necessary to ensure that fees are properly and efficiently collected. The rules must be generally consistent with procedures governing the collection of the gasoline license tax provided for in Title 15, chapter 70, so that gasoline distributors experience minimum additional requirements or responsibilities.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Findings and purposes.** (1) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(2) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(3) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(4) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in [section 7], is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.

(5) The purposes of [sections 1 through 7 and 9 through 12] are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks; and

(c) assist tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks.

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Section 2. **Definitions.** The following definitions apply to [sections 1 through 7 and 9 through 12]:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Board" means the petroleum tank release compensation board established in [section 8].

(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(5) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(6) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(7) "Distributor" means a distributor as defined in 15-70-201.

(8) "Eligible costs" means expenses reimbursable under [section 3].

(9) "Fee" means the petroleum storage tank cleanup fee provided for in [section 7].

(10) "Fund" means the petroleum tank release cleanup fund established in [section 6].

(11) "Gasoline" means gasoline as defined in 15-70-201.

(12) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(13) "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(14) "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(15) "Petroleum" or "petroleum products" means crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

(16) "Petroleum storage tank" means a tank that contains petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

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(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections (16)(b) and (16)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred t in subsections (16)(d)(i) and (16)(d)(ii), if the facility is intrastate.

(17) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(18) "Release" means a release, as defined in 75-10-701, of petroleum or petroleum products from a petroleum storage tank.

Section 3. **Reimbursement for expenses caused by a release.** (1) Subject to the availability of funds under subsection (5), an owner or operator who is eligible under [section 4] and complies with [section 5] and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs; and

(b) compensation paid to third parties for bodily injury or property damage.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, operator, or a third party;

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(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before [the date of passage and approval of this act];

(g) expenses exceeding the maximum reimbursements provided for in subsection (4).

(3) An owner or operator may designate a person as his agent to receive the reimbursement.

(4) Subject to the availability of funds under subsection (5), for releases that are discovered and reported on or after [the date of passage and approval of this act], the board shall reimburse an owner or operator for 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board.

Section 4. **Eligibility.** (1) An owner or operator is eligible for reimbursement for eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after [the date of passage and approval of this act];

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule;

(d) the release was an accidental release; and

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release.

(2) An owner or operator is not eligible for reimbursement for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad;

(d) a tank belonging to the federal government;

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(e) a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored;

(f) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(g) a mobile storage tank used to transport petroleum or petroleum products from one location to another.

Section 5. **Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from his petroleum storage tank, he shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office with jurisdiction over a corrective action for the release. The local government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator and the board of its approval of a corrective action plan.

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, parts 4 and 7, and other applicable law and rules.

(f) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the department in the form and manner required by

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the board. The department shall forward each claim and appropriate documentation to the board and notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.

(g) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under [section 4]; and

(ii) has complied with this section and any rules adopted pursuant to this section.

(3) If an owner or operator disagrees with a board determination under subsection (2), he may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(5) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or

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operator. The board may grant or deny, in whole or in part, any request for a guarantee.

Section 6. **Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated as provided in 17-7-502.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in [section 7];

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature; and

(d) all interest earned on money in the fund.

(3) The fund may be used only:

(a) to administer [sections 1 through 7 and 9 through 12], including payment of board and department expenses associated with administration;

(b) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(c) for repayment of any advance made under subsection (4), plus interest earned on the advance.

(4) (a) The legislature may appropriate to the fund repayable advances as necessary to carry out the purposes of [sections 1 through 7 and 9 through 12]. The outstanding total of repayable advances may not exceed the amount the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the next 24 months.

(b) Advances to the fund must be repaid and interest earned on advances must be paid to the general fund when determined appropriate by the board. However, all advances to the fund plus the interest earned must be repaid on or before December 31, 1995.

Section 7. **Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations.** (1) Except as provided in subsection (4), every distributor shall pay to the department of revenue a petroleum storage tank cleanup fee for each gallon of gasoline distributed by him within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991; and

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991.

(2) Gasoline exported or sold for export out of the state may not be included in the measure of a distributor's fee.

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(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds $8 million. Whenever the unobligated fund balance is less than $4 million, the department of revenue shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds $8 million.

(5) The department of revenue shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee.

Section 8. **Petroleum tank release compensation board.** (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by the governor as follows:

(a) the director of the department of health and environmental sciences or his representative;

(b) the state fire marshal or his representative;

(c) a representative of the petroleum services industry;

(d) a representative of independent petroleum marketers and chai.. retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board shall elect a chairman.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503.

Section 9. **Powers and duties of board.** (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of [sections 1 through 7 and 9 through 12], including the payment of reimbursement to owners and operators.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of [section 5(2)], shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in [section 5].

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(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business as may be necessary to administer its responsibilities under [sections 1 through 7 and 9 through 12]. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) The board may hire staff, and the department shall provide staff support to the board as the department determines it is able. The board shall use the fund to pay its staff expenses and to pay for department staff utilized for the review or preparation of corrective action plans and for the oversight of corrective action undertaken by owners and operators for the purposes of [sections 1 through 7 and 9 through 12].

(5) The board shall adopt rules to administer [sections 1 through 7 and 9 through 12], including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of [sections 1 through 7 and 9 through 12]; and

(e) other rules necessary for the administration of [sections 1 through 7 and 9 through 12].

Section 10. **Rulemaking authority — department and department of revenue.** (1) The department may adopt rules necessary to administer its responsibilities under [sections 1 through 7 and 9 through 12], including requirements for approval of corrective action plans.

(2) The department of revenue shall adopt rules governing the collection of the petroleum storage tank cleanup fee. The rules may include, at a minimum, reporting and recordkeeping requirements, method and timing of payment, and examination of records. The rules must be generally consistent with procedures governing the collection of the gasoline license tax provided for in Title 15, chapter 70.

Section 11. **Other authorities unaffected.** Payment of reimbursement, approval of a corrective action plan, or other action of the department or the board under [sections 1 through 7 and 9 through 12] does not affect the authority of the department or any other state agency to pursue an action authorized by Title 75, chapter 10, parts 4 or 7, or any other law or rule that applies to releases from petroleum storage tanks.

Section 12. **Criminal penalties.** A person who knowingly misrepresents the date of discovery of a release, submits or causes to be submitted a fraudulent claim or document, or makes a false statement or representation in seeking or assisting a person to seek reimbursement under [sections 1 through 7 and 9 through 12] is subject to a fine not to exceed $10,000

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for each violation or imprisonment not to exceed 6 months, or both. A person convicted of a second or subsequent violation of this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both.

Section 13. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; *[section 6];* 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 14. **Initial appointments to board.** (1) Notwithstanding [section 8], the members of the petroleum tank release compensation board first appointed by the governor shall serve for terms to be designated by the governor and to expire on June 30 of the respective year. The terms of two members must expire in 1990, two in 1991, and three in 1992.

(2) The governor shall make the initial appointments to the board no later than June 30, 1989.

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Section 15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Effective dates.** (1) [Sections 1, 2, 8, 9, 10, 14, 15,] and this section are effective on passage and approval.

(2) [Sections 6, 7, and 13] are effective July 1, 1989.

(3) [Sections 3, 4, 5, 11, and 12] are effective October 1, 1989.

Approved April 13, 1989.

# CHAPTER NO. 529

[HB 701]

AN ACT TO PROVIDE FOR CENTRAL FILING IN THE OFFICE OF THE SECRETARY OF STATE OF CERTAIN STATUTORY AGRICULTURAL LIENS; AMENDING SECTIONS 71-3-125, 71-3-402, 71-3-404, 71-3-703, 71-3-712, 71-3-802, AND 71-3-902, MCA; REPEALING SECTIONS 71-3-403, 71-3-803, AND 71-3-903, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 71-3-125, MCA, is amended to read:

**"71-3-125. Filing of agricultural lien statements.** (1) Unless a *statement* of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business as defined in 30-1-201(9), buys a farm product takes it free of any lien created by this chapter even though the lien is otherwise perfected.

(2) A *statement* of an agricultural lien is sufficient if it:

(a) gives the names and addresses of the debtor and lienor *and the county of residence of the debtor*;

(b) describes the type of lien and its statutory authority;

(c) describes the collateral;

(d) contains the notation by the *secretary of state* of the date of filing *and filing number*;

(e) is signed by the lienor;

*(f) describes the service or product furnished. If the collateral is farm products, the statement must state the county in which the farm products are located, designated by type of farm product.*

*(g) states the price or wage agreed upon or, if the price or wage was not agreed upon, the reasonable value of the service or product furnished;*

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*(h) states the amount remaining unpaid;*

*(i) states the terms and period of employment if it is a farm laborer's lien filed pursuant to part 4 of this chapter;*

*(j) describes the land upon which seed or grain was or will be sown, planted, or used if it is a lien for seed or grain filed pursuant to part 7 of this chapter;*

*(k) describes the land upon which the grain or crops were grown and the place the grain or crops are presently stored if it is a thresher's lien filed pursuant to part 8 of this chapter;*

*(l) describes the land upon which the service was performed if it is a lien for spraying or dusting filed pursuant to part 9 of this chapter; and*

*(m) states the starting date of insurance coverage if it is a lien filed pursuant to part 7 of this chapter.*

(3) *The agricultural lien statement* must be in the form prescribed by the secretary of state.

(4) The secretary of state shall:

(a) record *the agricultural lien statement* on the centralized computer system as set forth in 30-9-403; and

(b) establish fees for such recordings as set forth in 30-9-403.

(5) For the purposes of this section, an agricultural lien means a lien under *part* 4, 7, 8, or 9 of this chapter.

*(6) A statement of an agricultural lien or continuation statement that has been filed at the office of the county clerk and recorder lapses on March 31, 1990, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement and all related documents on file with the county clerk and recorder."*

Section 2. Section 71-3-402, MCA, is amended to read:

**"71-3-402. How lien obtained.** In order to acquire a lien, as specified in 71-3-401, the person performing services shall, within 30 days after the services are fully performed, file in the office of the *secretary of state a statement of agricultural lien, as provided in 71-3-125,* and the address to which notice *must* be directed as required by 71-3-404."

Section 3. Section 71-3-404, MCA, is amended to read:

**"71-3-404. Notice to other lienholders.** (1) *A* person intending to foreclose a lien secured under the provisions of this part *shall* give a written notice to the owner or the person against whom the lien is claimed and all chattel mortgagees, encumbrancers, and all other lienholders who appear on record in the office of the secretary of state that in not less than 10 days from the date of notice he will institute proceedings for the foreclosure of his lien. *Any* other labor *lienholder* to whom notice is given *may* join in *the* foreclosure proceedings and *is* entitled to a pro rata share of the proceeds of the foreclosure sale, as provided *in this part.* However, if the

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notified labor *lienholder does not join in the proceedings, he is not* entitled to share pro rata in the proceeds of the sale.

(2) The lien notice required herein must be given by certified mail and directed to the last-known address of the owner or the person against whom the lien is claimed and to the addresses of the chattel mortgagees, encumbrancers, and all other lienholders as their addresses appear of record. The return of the foreclosure sale must be accompanied by proof of the giving of notice as required to be given *in this section.*"

Section 4. Section 71-3-703, MCA, is amended to read:

"**71-3-703. How to obtain lien.** Any person, *company, association, or corporation* who is entitled to a lien under 71-3-701 shall, within 90 days after the seed or grain is furnished or the funds, means, or *money* advanced *for the seed or grain,* file in the office of the *secretary of state a statement of agricultural lien as provided in 71-3-125.* Unless the person entitled to *a* lien *files the lien* statement within the time *required,* he *is considered* to have waived the right *to a lien.*"

Section 5. Section 71-3-712, MCA, is amended to read:

"**71-3-712. How lien obtained.** Any person, *company, association, or corporation* who is entitled to a lien under 71-3-711 shall, within 30 days after the insurance is issued, file in the office of the *secretary of state a statement of agricultural lien as provided in 71-3-125. A* mutual company may file a lien for the largest amount that may become due under its assessment power, and in the event that the amount assessed *is* not as large as the amount of the lien claimed, the amount assessed and due *is* the amount the mutual insurance company *is* entitled to under this lien. Unless the person, company, association, or corporation entitled to a lien *files the agricultural lien* statement within the time *required,* he or it *is considered* to have waived the right *to a lien.*"

Section 6. Section 71-3-802, MCA, is amended to read:

"**71-3-802. How lien obtained.** (1) *A* person intending to avail himself of the benefits of this part *shall* file with the *office of the secretary of state a statement of agricultural lien as provided in 71-3-125,* within 10 days after the last service was rendered or labor performed in the threshing of grain or other crops or the cutting and harvesting and threshing by *the* combined harvester and thresher, a notice that within 20 days a lien, as specified in 71-3-801, will be claimed.

(2) If the grain or other crops cut, harvested, and threshed are being hauled from the machine or combine direct to the elevator or to any other purchaser, the threshermen, *swather,* or owner of the combine desiring to claim *a* lien shall also serve written notices upon the elevatorman or other private purchaser that he will claim and file a lien upon *the* grain or other crops for his services or labor performed in threshing or combining and threshing the *grain or crops.*"

Section 7. Section 71-3-902, MCA, is amended to read:

"**71-3-902. How lien obtained.** Any person, firm, corporation, or partnership who is entitled to a lien under this part shall, within 60 days

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after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the *secretary of state a statement of agricultural lien as provided in 71-3-125.*"

Section 8. **Repealer.** Sections 71-3-403, 71-3-803, and 71-3-903, MCA, are repealed.

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Applicability.** [This act] applies to agricultural liens filed after September 30, 1989.

Approved April 14, 1989.

# CHAPTER NO. 530

[HB 143]

AN ACT ALLOCATING A PORTION OF THE INTEREST INCOME FROM THE RESOURCE INDEMNITY TRUST TAX FOR THE PLUGGING OF CERTAIN OIL AND GAS WELLS; ESTABLISHING AN OIL AND GAS PRODUCTION DAMAGE MITIGATION ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; PROVIDING A LIEN AGAINST THE PERSON RESPONSIBLE FOR PLUGGING THE WELL; AMENDING SECTIONS 15-38-202, 17-7-502, 82-10-402, 82-11-101, 82-11-111, AND 82-11-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature to create an oil and gas production damage mitigation account to be administered by the board of oil and gas conservation for the purpose of properly plugging and abandoning oil and gas wells when a responsible person cannot be found or when the responsible person does not have sufficient financial resources. The board shall adopt rules to help it define "sufficient financial resources", shall require a responsible person to pay the costs of plugging and abandoning to the extent of his available resources, and shall pursue full cost recovery for funds spent from the account through the procedures provided in [section 9] or other lawful means. The board may adopt rules to administer instituting a lien on the person's personal and real property to cover the cost of plugging and abandoning.

The legislature intends that the board use the account for reclamation related to land, water, or wildlife resources disturbed by abandoned oil and gas wells, injection wells, sumps, and seismographic shot holes.

It is also the intent to remove producing wells completed after June 30, 1989, from drilling bonds and to limit the liability of the bond or its equivalent to the period between issuance of the bond and either proper plugging and abandoning of a dry hole or completion of a producing well. The board shall adopt forms for the producer to indicate that a well has

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been completed and shall, upon receipt of the information and payment required under [section 7], release and absolve the owner of the well from the bond required under 82-11-123.

It is further the intent of the legislature that the board of oil and gas conservation respond promptly to emergency situations that may arise.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-38-202, MCA, is amended to read:

**"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All moneys paid into the resource indemnity trust fund shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added thereto until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) *(a)* At the beginning of each biennium, *there* is allocated from the interest income of the resource indemnity trust fund:

*(i) an amount not to exceed $175,000* to the environmental contingency account pursuant to the conditions of 75-1-1101; *and*

*(ii) beginning in fiscal year 1992, an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of [section 6].*

*(b)* The remainder of the interest income is allocated as follows:

*(i)* Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.

*(ii)* Beginning in fiscal year 1988, 12% of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

*(iii)* Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2.

*(iv)* Beginning in fiscal year 1990, 46% of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

*(v)* Beginning in fiscal year 1990, 4% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource

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indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 2. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; *[section 6];* 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 3. Section 82-10-402, MCA, is amended to read:

**"82-10-402. Inventory of abandoned wells and seismic operations — reclamation procedures.** (1) The *board of oil and gas* conservation shall maintain a *record* of the abandoned oil or gas wells, injection

wells, sumps, and seismographic shot holes in the state *that* disturb land, water, or wildlife resources to a degree not in compliance with plugging, pollution prevention, and reclamation rules of the board. This *record must* be compiled from petitions or written statements from the owners of surface rights or lessees.

(2) The board shall check the *record compiled* under subsection *(1)* against its drilling records and shall determine *and list* the name of the person who abandoned the well, sump, or hole, whenever this information is available. When a person so listed applies to the board for a new drilling permit, the board may issue the permit only after approving a plan by which the applicant will reclaim the land disturbed by his abandoned wells, sumps, or holes within 3 years.

(3) When the person who abandoned a well, sump, or hole cannot be identified or located *or when the person does not have sufficient financial resources to pay for complete reclamation,* the board may then reclaim the disturbed land with funds available from the *oil and gas production damage mitigation account in a manner consistent with the requirements for the use of the account provided in [section 6] and [section 9].*

*(4) As used in subsection (3), "well" includes a class II injection well, as defined in 82-11-101, for which a drilling permit or a permit authorizing use of a well for that purpose was granted by the board after June 30, 1989, and water source wells used in connection with enhanced recovery projects."*

Section 4. Section 82-11-111, MCA, is amended to read:

**"82-11-111. Powers and duties of board.** (1) The board shall make such investigations as it considers proper to determine whether waste exists or is imminent or whether other facts exist which justify any action by the board under the authority granted by this chapter with respect thereto.

(2) Subject to the administrative control of the department under 2-15-121, the board shall:

(a) require measures to be taken to prevent contamination of or damage to surrounding land or underground strata caused by drilling operations and production, including but not limited to regulating the disposal or injection of water and disposal of oil field wastes;

(b) classify wells as oil or gas wells or class II injection wells for purposes material to the interpretation or enforcement of this chapter;

(c) adopt and enforce rules and orders to effectuate the purposes and the intent of this chapter.

(3) The board shall determine and prescribe what producing wells shall be defined as "stripper wells" and what wells shall be defined as "wildcat wells" and make such orders as in its judgment are required to protect those wells and provide that stripper wells may be produced to capacity if it is considered necessary in the interest of conservation to do so.

(4) With respect to any pool from which gas was being produced by a gas well on or prior to April 1, 1953, this chapter does not authorize the board to limit or restrain the rate (daily or otherwise) of production of gas

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from that pool by any well then or thereafter drilled and producing from that pool to less than the rate at which the well can be produced without adversely affecting the quantity of gas ultimately recoverable by the well.

(5) The board has exclusive jurisdiction over all class II injection wells and all pits and ponds in relation to those injection wells. The board may:

(a) issue, suspend, revoke, modify, or deny permits to operate class II injection wells, consistent with rules made by it;

(b) examine plans and other information needed to determine whether a permit should be issued or require changes in plans as a condition to the issuance of a permit;

(c) clearly specify in a permit any limitations imposed as to the volume and characteristics of the fluids to be injected and the operation of the well;

(d) authorize its staff to enter upon any public or private property at reasonable times to:

(i) investigate conditions relating to violations of permit conditions;

(ii) have access to and copy records required under this chapter;

(iii) inspect monitoring equipment or methods; and

(iv) sample fluids which the operator is required to sample; and

(e) adopt standards for the design, construction, testing, and operation of class II injection wells.

*(6) The board shall determine, for the purposes of using the oil and gas production damage mitigation account established in [section 6]:*

*(a) when the person responsible for an abandoned well, sump, or hole cannot be identified or located, or if the person is identified or located, when the person does not have sufficient financial resources to properly plug the well, sump, or hole; or*

*(b) when a previously abandoned well, sump, or hole is the cause of potential environmental problems and no responsible party can be identified or located or, if a responsible party can be identified and located, the person does not have sufficient financial resources to correct the problems.*"

Section 5. Section 82-11-123, MCA, is amended to read:

"**82-11-123. Requirements for oil and gas operations.** Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures, to facilitate the discovery of potential geothermal energy sources, reports on well locations, and the filing of directional surveys, if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

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(3) the drilling, casing, producing, and plugging of wells and class II injection wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, blowouts, cavings, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from such well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

(5) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well, *which bond may not be canceled or absolved:*

*(a) if the well fails to produce oil or gas in commercial quantities, until:*

*(i) the board determines the well is properly plugged and abandoned as provided in the board's rules; or*

*(ii) the requirements of [section 8] are met; or*

*(b) if the well is completed after June 30, 1989, until the owner notifies the board that the well is producing oil and gas in commercial quantities and meets the requirements of [section 7]*;

(6) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality thereof;

(7) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities thereof, which records shall be available for examination by the board or its employees at all reasonable times, and that that person file with the board such reports as it may prescribe with respect to quantities, transportations, and storages of the oil or gas or water; and

(8) the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells."

Section 6. **Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) On July 1, 1991, and at the beginning of each succeeding biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds $200,000, no allocation will be made; or

(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more

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than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account:

(a) all funds received by the board pursuant to 82-11-136; and

(b) all fees received by the board from owners of producing wells pursuant to [section 7].

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well if the board determines that the well, sump, or hole has been abandoned and the responsible person cannot be identified or located or the responsible person does not have sufficient funds to pay the costs. The responsible person shall, however, pay costs to the extent of his available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in [section 9] for costs expended from the account to properly plug the well and to mitigate any damage caused by the well.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

(6) The board shall submit to the legislature at the beginning of each regular session a complete financial report on the oil and gas production damage mitigation account, including a description of all expenditures made since the preceding report.

Section 7. **Release of producing oil or gas well from drilling bond — fee.** Upon receipt of notification by the owner on a form prescribed by the board, payment by the owner of $125, and proof from the owner that a well completed after June 30, 1989, is producing oil or gas in commercial quantities and is subject to the tax under 15-38-104, the board shall release and absolve the owner of the well from the bond required under 82-11-123.

Section 8. **Landowner's bond on noncommercial well.** If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in 82-11-123 upon its acceptance of surety in the form of a certificate of deposit, in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well, or in the form of a property bond of two times the value of the required certificate of deposit. The release of the certificate of deposit or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged.

Section 9. **Lien created.** (1) The oil and gas production damage mitigation account has a lien in the amount of the expenditure from the account under [section 6(4)], plus interest accrued at the rate of 10% a year, against all real and personal property in this state owned by:

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(a) the responsible person, if that person is subsequently identified or located; or

(b) the responsible person, if that person is known but cannot or will not fully reimburse the oil and gas production damage mitigation account.

(2) The lien created under subsection (1) must be filed in the office of the secretary of state and must attach to all real or personal property of the responsible person.

(3) A lien created by this section is valid until paid in full or otherwise discharged. The lien must be foreclosed in accordance with applicable laws governing foreclosure of mortgages and liens.

Section 10. Section 82-11-101, MCA, is amended to read:

**"82-11-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

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(9) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (10) of this section.

(10) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.

(11) "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

(12) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(13) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

(14) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(15) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

*(16) "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, sump, or seismographic shot hole and who is:*

*(a) a corporation, association, partnership, or other business organization with assets in excess of $250,000; or*

*(b) if the business organization does not have assets in excess of $250,000, a natural person with primary ownership in the business organization.*

*(17)* "State waters" means any body of water, either surface or underground.

*(18)* "Waste" means:

(a) physical waste, as that term is generally understood in the oil and gas industry;

(b) the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

(c) the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

(d) the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)"

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. **Codification instruction.** [Sections 6 through 9] are intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [sections 6 through 9].

Section 14. **Effective date.** [This act] is effective July 1, 1989.

Approved April 14, 1989.

# CHAPTER NO. 531

[HB 525]

AN ACT TO ESTABLISH THE VALUE OF TALC FOR NET PROCEEDS PROPERTY TAX PURPOSES AND FOR RESOURCE INDEMNITY TRUST TAX PURPOSES; TO ESTABLISH A SPECIFIC RESOURCE INDEMNITY TRUST TAX RATE FOR TALC; AMENDING SECTIONS 15-6-131, 15-8-111, 15-23-103, 15-23-106, 15-23-115, 15-23-502, 15-23-503, 15-23-521, 15-38-103, AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Net proceeds for talc — statement — value.** (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of talc must contain the following:

(a) the name and address of the owner or lessee or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds

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derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of talc extracted, produced, and treated or sold from the mine during the period covered by the statement;

(d) the amount and character of the talc and the yield of the talc from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For the purposes of this section, the gross yield or value of talc is determined by multiplying the number of tons of talc reported under subsection (1)(c) by:

(i) for the taxable year beginning January 1, 1989, $4.25; and

(ii) for the taxable years beginning January 1, 1990, and thereafter, the product obtained by multiplying $4.25 by the quotient of the PCE for the first quarter of the taxable year for which the net proceed value is being calculated, divided by the PCE for the first quarter of the 1989 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

Section 2. **Gross value of product for talc.** As used in this part, when referring to talc, "gross value of product" is the gross yield or value of talc as determined in [section 1(2)].

Section 3. Section 15-6-131, MCA, is amended to read:

**"15-6-131. Class one property — description — taxable percentage.** (1) Class one property includes the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 *or, for talc, as provided in [section 1]*."

Section 4. Section 15-8-111, MCA, is amended to read:

**"15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused

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by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when no national appraisal guide exists.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 *or, if applicable, as provided in [section 1].*

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class thirteen, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(7) Land and the improvements thereon are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

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(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town. **(Subsection (6)(d) terminates January 1, 1991—sec. 10, Ch. 681, L. 1985.)"**

Section 5. Section 15-23-103, MCA, is amended to read:

**"15-23-103. Due date of reports and returns — extensions.** (1) Except as provided in subsection (2) and 15-23-602, each report or return described in 15-23-301, 15-23-402, 15-23-502, or 15-23-701 shall be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201 *or [section 1] must* be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 6. Section 15-23-106, MCA, is amended to read:

**"15-23-106. Transmission to the counties.** (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of such property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of such property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county shall be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, *[section 1]*, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The agent of the department shall enter the assessed values so transmitted in the assessment book in a manner prescribed by the department."

Section 7. Section 15-23-115, MCA, is amended to read:

**"15-23-115. Interest.** If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, *[section 1]*, 15-23-602,

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15-23-701, or 15-23-802, the department shall inform its agents at the county level of such determination, and if any additional tax is due, there must be added thereto until paid in full interest at the rate of 1% a month or fraction thereof from the date the original tax was due and payable. In no instance will a taxpayer subject to imposition of interest pursuant to this section be also subject to the penalty and interest provisions contained in 15-16-102."

Section 8. Section 15-23-502, MCA, is amended to read:

**"15-23-502. Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by such person during the year preceding January 1 of the year in which such statement is made. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. *Except as provided in [section 1], the* statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to such person so engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of same into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

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(11) the assessed valuation of reduction works for the calendar year for which such return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any such services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation."

Section 9. Section 15-23-503, MCA, is amended to read:

"**15-23-503. Net proceeds — how computed.** (1) The department of revenue shall calculate from the returns the gross product yielded from *a* mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. *Except as provided in [section 1], net* proceeds shall be determined by subtracting from the value of the gross product *of the mine* the following:

(a) all royalty paid or apportioned in cash or in kind by the person engaged in mining;

(b) all *money* expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all *money* expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as provided *in this section*;

(d) all *money* expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of *the* milling and reduction works for the calendar year for which *the* return is made;

(f) all *money* actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals and for marketing the product and the conversion of the *product* into money;

(g) all *money* expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502;

(h) all *money* expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in Montana, for assaying and sampling the extracted minerals, for the cost of reclamation at the site of the mine, and

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for engineering and geological services conducted in Montana for existing mining operations but not including services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of *the* cost each year for a period of 10 years.

(3) *Money* invested in mines or improvements may *not* be allowed as a deduction unless all machinery, equipment, and buildings represented by *the money* are returned to the county in which *the* mine is located for assessment purposes at the level of assessment of all other property in *the* county.

(4) *Money* invested in the mines and improvements during any year except the year for which such statement is made and except as provided in this section may *not* be included in *the* expenditures, and *the* expenditures may not include the *salary* or any portion *of the salary* of any person or officer not actually engaged in the working of the mine or superintending the management *of the mine*."

Section 10. Section 15-23-521, MCA, is amended to read:

"**15-23-521. Examination of records by department.** The department of revenue *may* at any time examine the records of any person specified in this part as the *records* may pertain to the yield of ore or mineral products or deposit in order to verify the statements made by *the* person. *If* from *the* examination or from other information, *the* department finds any statement or any material part *of a statement* willfully false or fraudulent, *the* department must assess in the same manner as provided for in 15-23-503 *or [section 1]*."

Section 11. Section 15-38-103, MCA, is amended to read:

"**15-38-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means, *except as provided in [section 2]*, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens."

Section 12. Section 15-38-104, MCA, is amended to read:

"**15-38-104. Tax on mineral production.** *(1) Except as provided in subsection (2), the* annual tax to be paid by *a* person engaged in or carrying on the business of mining, extracting, or producing a mineral *is* $25, *plus*

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an additional amount computed on the gross value of product *that was* derived from the business work or operation within this state during the calendar year immediately preceding at the rate of ½ of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

*(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4%."*

Section 13. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 14. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 23, part 5, and the provisions of Title 15, chapter 23, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 38, part 1, and the provisions of Title 15, chapter 38, apply to [section 2].

Section 15. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1988.

Approved April 14, 1989.

# CHAPTER NO. 532

[HB 545]

AN ACT EXEMPTING "AGENT ORANGE" PAYMENTS FROM INDIVIDUAL INCOME TAXATION; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-111, MCA, is amended to read:

**"15-30-111. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

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(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability; and

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits, not in excess of $3,600, received:

(i) under the Federal Employees' Retirement Act;

(ii) under the public employee retirement laws of a state other than Montana; or

(iii) as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(g) all Montana income tax refunds or credits thereof;

(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans or specified as exempt from taxation by 19-13-1003;

(i) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005;

(j) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(k) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) all benefits received under the workers' compensation laws;

(m) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

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(n) all benefits paid under an optional retirement program that are specified as exempt from taxation by 19-21-212; *and*

*(o) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".*

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of *the* wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the

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limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(8) A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c) from adjusted gross income unless the benefits received under subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than $3,600, in which case the person may combine benefits to exclude up to a total of $3,600 from adjusted gross income. **(Subsection (2)(k) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"**

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved April 14, 1989.

# CHAPTER NO. 533

[HB 590]

AN ACT REPEALING MISCELLANEOUS LOCAL GOVERNMENT LICENSE TAXES AND THE LICENSING OF PUBLIC DANCING AND DANCEHALLS; REPEALING SECTIONS 7-21-2201 THROUGH 7-21-2215 AND 7-21-2601 THROUGH 7-21-2615, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Repealer.** Sections 7-21-2201 through 7-21-2215 and 7-21-2601 through 7-21-2615, MCA, are repealed.

Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 14, 1989.

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# CHAPTER NO. 534

[HB 607]

AN ACT PROVIDING THAT FILING A FEDERAL SUBCHAPTER S TAX RETURN WITH THE STATE CORPORATE TAX RETURN IS SUFFICIENT TO ESTABLISH THE STATUS OF A MONTANA SMALL BUSINESS CORPORATION FOR INCOME TAX PURPOSES; AMENDING SECTIONS 15-31-201 AND 15-31-208, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-31-201, MCA, is amended to read:

**"15-31-201. Definitions.** (1) For purposes of this part, the term "small business corporation" means a corporation doing business in Montana and which has made a valid election under Subchapter S of Chapter 1 of the Internal Revenue Code of 1954 and thereafter:

*(a)* has filed a copy *of the approved election* with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective; *or*

*(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter.*

(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under Subchapter S in effect for *the* taxable year and:

*(a)* has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective; *or*

*(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter.*"

Section 2. Section 15-31-208, MCA, is amended to read:

**"15-31-208. Failure to file — disqualification.** If a corporation does not file a copy of the federal Subchapter S election on or before the 15th day of the third month of the taxable year *or file a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter,* the corporation *does* not qualify as a small business corporation under this part for the taxable year."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date and applicability date.** [This act] is effective July 1, 1989, and applies to all taxable years ending after July 1, 1989.

Approved April 14, 1989.

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# CHAPTER NO. 535

[HB 712]

AN ACT MAKING THE FEES FOR ORIGINAL CERTIFICATES OF OWNERSHIP, TRANSFERS OF TITLE, AND LOST CERTIFICATES UNIFORM AMONG MOTOR VEHICLES, SNOWMOBILES, AND BOATS; INCREASING THE REGISTRATION FEE FOR MOTOR VEHICLES; AND AMENDING SECTIONS 23-2-508 THROUGH 23-2-510, 23-2-611 THROUGH 23-2-613, 61-3-203, AND 61-3-321, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-508, MCA, is amended to read:

**"23-2-508. (Effective July 1, 1988) Certificate of ownership.** (1) Except as provided in subsection (9), no motorboat or sailboat 12 feet in length or longer may be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town or county;

(c) business or home address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) such other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, bill of sale, foreign title, official certificate of boat number, fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide such proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired if known, and other information requested by the department of justice.

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(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) Any motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number thereon must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of *$5* must be paid to the county treasurer, *$3.50* of which must be forwarded by the county treasurer to the department of justice and deposited in the motor vehicle recording account of the state special revenue fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless he transfers a part of his interest in the motorboat or sailboat or he renews the certificate of number for the motorboat or sailboat."

Section 2. Section 23-2-509, MCA, is amended to read:

**"23-2-509. Lost or mutilated certificate.** (1) If a certificate of ownership is lost or mutilated or becomes illegible, the person to whom it was issued shall immediately make application for and obtain a duplicate, upon payment of a fee of *$3.*

(2) The duplicate certificate of ownership must be plainly marked "duplicate" across its face and be mailed or delivered to the applicant."

Section 3. Section 23-2-510, MCA, is amended to read:

**"23-2-510. (Effective July 1, 1988) Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of a certificate of ownership to a motorboat or sailboat 12 feet in length or longer registered as required under the provisions of this part, the person whose title or

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interest is to be transferred shall sign the certificate of ownership issued for the motorboat or sailboat in the appropriate space provided on the reverse side of the certificate, and *the* signature must be acknowledged before a notary public.

(2) Within 20 calendar days *after endorsement*, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the motorboat or sailboat. The county treasurer shall forward the application to the department of justice, which shall file the certificate upon receipt. *A* certificate of ownership may *not* be issued by the department until any outstanding certificate is surrendered to the department or its loss is established to the department's reasonable satisfaction. The county treasurer shall collect a fee of *$5* for each application for transfer of ownership, of which *$3.50* must be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used motorboat or sailboat 12 feet in length or longer from a licensed dealer has a grace period of 20 calendar days from the date of purchase to register the motorboat or sailboat, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the vessel for the current year. It is not a violation of this part or any other law for the purchaser to operate a newly acquired motorboat or sailboat 12 feet in length or longer without a certificate of ownership, certificate of registration, and decal during the 20-day grace period. During this period the sticker provided for in subsection (4) must remain affixed to the motorboat or sailboat.

(4) Prior to the delivery of a motorboat or sailboat 12 feet in length or longer to the purchaser, the dealer shall issue and affix to a motorboat or sailboat constructed after October 31, 1972, a sticker as prescribed by the department of justice. The sticker must contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the motorboat or sailboat, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) do not apply in the event of the transfer of a motorboat or sailboat 12 feet in length or longer to a duly licensed dealer intending to resell the motorboat or sailboat and who operates it only for demonstration purposes, but every dealer, upon transferring *his* interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate containing notice of a security interest, if any, shall issue a new certificate of ownership, together with a statement of any conditional sales contract, mortgage, or other lien."

Section 4. Section 23-2-611, MCA, is amended to read:

**"23-2-611. Certificate of ownership.** (1) *A* snowmobile may *not* be operated upon any public lands, trails, easements, lakes, rivers, streams,

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roadways or shoulders of roadways, streets, or highways, unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner by town and county;

(c) business or home mail address of the owner;

(d) name and address of any lien holder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number; and

(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which shall be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office, and shall furnish the applicant a certificate of ownership which shall contain that information in the application considered necessary by the department of justice and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of *$5* shall be paid to the county treasurer, *$3.50* of which shall be forwarded by the county treasurer to the department of justice and deposited in the motor vehicle recording account of the state special revenue fund."

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Section 5. Section 23-2-612, MCA, is amended to read:

**"23-2-612. Transfer of interest.** (1) Except as provided in subsection (3), upon a transfer of any certificate of ownership to a snowmobile registered as required under the provisions of 23-2-601 through 23-2-644, the person whose title or interest is to be transferred shall write his signature with pen and ink upon the certificate of ownership issued for the snowmobile in the appropriate space provided upon the reverse side of the certificate, and such signature shall be acknowledged before a notary public.

(2) Within 20 calendar days *after endorsement*, the transferee shall make application for transfer of the certificate of ownership with the county treasurer of the county in which the transferee resides and also make application for registration of the snowmobile. The county treasurer shall forward the application to the department of justice, which shall file the same upon receipt thereof. No certificate of ownership may be issued by the department of justice until the outstanding certificates are surrendered to that office or their loss established to its reasonable satisfaction. The county treasurer shall collect a fee of *$5* for each application for transfer of ownership, of which *$3.50* shall be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund.

(3) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to register the snowmobile, make application for a certificate of ownership, and obtain a decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year. It is not a violation of 23-2-601 through 23-2-644 or any other law for the purchaser to operate a newly acquired snowmobile without a certificate of ownership, certificate of registration, and a decal during the 20-day period. During this period the sticker, provided for in subsection (4), shall remain affixed to the snowmobile.

(4) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the department of justice). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(5) The provisions of subsection (2) of this section do not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell the snowmobile and who operates it only for demonstration purposes, but every dealer, upon transferring *his* interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of 23-2-601 through 23-2-644. The department of justice, upon receipt of the certificate of ownership and application for a new certificate, containing notice of a security interest, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien."

Section 6. Section 23-2-613, MCA, is amended to read:

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**"23-2-613. Lost or mutilated certificates.** If any certificate of ownership is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately make application for and obtain a duplicate *certificate*, upon payment of a fee of *$3*."

Section 7. Section 61-3-203, MCA, is amended to read:

**"61-3-203. Fee for original certificate of ownership and transfer of title — disposition.** A charge of *$5* must be made for issuance of an original certificate of ownership of title and for a transfer of registration which must be collected by the county treasurer. The fees must be distributed as follows:

(1) *$3.50* of each fee must be remitted to the department by the county treasurer, as provided in 15-1-504, for each application for original certificate of ownership or transfer of registration.

(2) *Each* March the county commissioners of each county shall divide the fees retained by the county to:

(a) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town; and

(b) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns."

Section 8. Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses shall be classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or

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bridge materials, new and secondhand, shall pay a fee of $15 annually, regardless of size or capacity.

(2) All rates shall be 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year shall be one-half of the regular fee.

(5) An additional fee of $5 per year for each registration of a vehicle shall be collected as a registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the state special revenue fund.

(6) The provisions of this part with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332(7), or 61-3-335."

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 14, 1989.

# CHAPTER NO. 536

[SB 8]

AN ACT TO EXEMPT ROYALTIES RECEIVED BY INDIAN TRIBES PURSUANT TO 1938 LEASE AGREEMENTS FROM TAXATION UNDER THE PROCEEDS, OIL AND GAS SEVERANCE, AND RESOURCE INDEMNITY TRUST TAXES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Tribal royalties exempt.** Royalties received by an Indian tribe with respect to on-reservation oil and gas production pursuant to a lease entered into under the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a-396g (1983)) are exempt from taxation.

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Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 23, part 6; Title 15, chapter 36; and Title 15, chapter 38; and the provisions of Title 15, chapter 23, part 6; Title 15, chapter 36; and Title 15, chapter 38; apply to [section 1].

Approved April 14, 1989.

# CHAPTER NO. 537

[SB 94]

AN ACT CREATING A MOTORIST INFORMATION SIGN PROGRAM; AUTHORIZING INSTALLATION AND MAINTENANCE OF MOTORIST INFORMATION SIGNS WITHIN THE RIGHTS-OF-WAY OF INTERSTATE AND PRIMARY HIGHWAYS; ALLOWING THE DEPARTMENT OF HIGHWAYS TO AWARD FRANCHISES TO PRIVATE PERSONS TO ESTABLISH AND OPERATE A MOTORIST INFORMATION SIGN PROGRAM; PROVIDING FOR FEES TO COVER THE COSTS OF THE PROGRAM; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 60-5-110 AND 75-15-111, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 15] grants the department of highways authority to adopt rules to implement the provisions of [this act].

It is the intent of the legislature that the department have discretion to adopt rules that will result in a motorist information sign program that will aid the traveling public in locating gas, food, lodging, camping, recreation, and other tourist services that are conveniently accessible from the interstate and primary highways within the state. Such rules should supplement and interpret the provisions of [this act].

In adopting rules, the department should develop a policy for installation of motorist information signs. At a minimum, this policy should include criteria for:

(1) standards of service for business eligibility for placement of a logo sign;

(2) distances to eligible services;

(3) selection of eligible businesses for motorist information signing;

(4) location of motorist information signs at interchanges or intersections, in accordance with federal standards;

(5) standards for the size, design, installation, and maintenance of motorist information signs; and

(6) the costs to businesses for installation, annual maintenance, and repair of business signs.

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It is intended that the department establish service eligibility requirements with the knowledge that in the rural vastness of this state it is important for a traveler to obtain information about available services, even if the full range of services contemplated by federal guidelines is not available. The department may provide a method for the substitution or replacement of services that are not available at a location, and it may establish some method of signing to indicate to the traveler that a particular service category is not available at the signed businesses.

It is intended that the department may require additional terms and conditions relating to issuance of a franchise for operation of the motorist information sign program. Such additional requirements may relate to termination of a franchise agreement and to the posting of a contractor's bond for sign construction and maintenance.

Finally, the department should consider the success of the motorist information sign programs established in the states of Idaho and Washington and the logo sign franchise program established in the state of Minnesota.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** It is the purpose of [sections 1 through 17] to provide for the installation of motorist information signs giving specific information of interest to the traveling public regarding motorist services that are conveniently accessible from the interstate and primary highways within the state.

Section 2. **Definitions.** As used in [sections 1 through 17], unless the context indicates otherwise, the following definitions apply:

(1) "Business sign" means a separately attached sign mounted on a motorist information sign panel to show the brand, symbol, trademark, or name, or combination of these, for a motorist service available on a crossroad at or near an interchange or intersection.

(2) "Crossroad" means a marked route or other public road intersecting a freeway or divided highway for which access is provided at an interchange or intersection.

(3) "Department" means the department of highways provided for in 2-15-2501.

(4) "Franchisee" means a person awarded a franchise as provided in [section 12].

(5) "Motorist information sign" means a rectangular sign panel located in the same manner as other official traffic signs, readable from the main traveled way, and that is a:

(a) specific information sign; or

(b) tourist-oriented directional sign.

(6) "Motorist service" means gas, food, lodging, camping, recreation, and other tourist services.

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(7) "Specific information sign" means a motorist information sign that is located on the interstate highway system and that contains:

(a) the words "GAS", "FOOD", "LODGING", or "CAMPING";

(b) directional information; and

(c) one or more individual business signs.

(8) "Tourist-oriented directional sign" means a motorist information sign located on the primary highway system to provide:

(a) business identification; and

(b) directional information for businesses, services, and activities of interest to tourists.

Section 3. **Specific information signs within right-of-way of interstate highway system.** Specific information signs may be erected and maintained within the right-of-way of the interstate highway system to give the traveling public specific information as to motorist services available on a crossroad at or near an interchange.

Section 4. **Specific information signs — number of business signs — distances.** (1) The number of specific information signs permitted is limited to one for each type of motorist service along an approach to an interchange or intersection.

(2) No more than six business signs may be displayed on a "GAS" specific information sign, and no more than four business signs may be displayed on a "FOOD", "LODGING", or "CAMPING" specific information sign. Except as provided in subsection (3), no business may be allowed more than one business sign on the same specific information sign.

(3) In areas where there are only one or two qualified businesses available for each of two or more types of motorist services, business signs for two types of services may be displayed by a business on the same specific information sign. No more than two business signs for each type of service may be displayed in combination on a specific information sign.

(4) To qualify for business identification on a specific information sign, a motorist service facility shall meet the eligibility criteria established in [section 6] and may not be located more than 3 miles from the interstate highway. However, if no eligible services are located within the 3-mile limit, the distance limits may be increased in 3-mile increments until either an eligible service or 15 miles is reached.

Section 5. **Sign composition — spacing — conformity with laws.** (1) A specific information sign panel must have a blue background with a white reflectorized border. The panels may be illuminated subject to regulation by the department.

(2) A business sign must have a blue background with a white legend unless other requirements are established by the department. Nationally, regionally, or locally known commercial symbols, brands, or trademarks for service stations, restaurants, campgrounds, and motels must be used when applicable. The symbol, brand, or trademark used on the business sign

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must be reproduced in the colors and general shape consistent with customary use. Messages, symbols, brands, or trademarks that interfere with or resemble any official warning or regulatory traffic sign, signal, or device are prohibited.

(3) Specific information signs are permitted only at locations where there is adequate distance between interchanges in compliance with the Manual on Uniform Traffic Control Devices, as amended.

(4) The spacing between two specific information sign panels and between specific information sign panels and official traffic control signs must be in accordance with the Manual on Uniform Traffic Control Devices. If there is insufficient space for both official traffic control signs and specific information signs, the official traffic control signs must be installed.

(5) The erection and maintenance of specific information signs must conform to national standards promulgated by the secretary of the U.S. department of transportation pursuant to 23 U.S.C. 131 and 23 U.S.C. 315 and rules adopted by the department under [section 15].

Section 6. **Business eligibility — criteria — restrictions.** (1) To be eligible for placement of a business sign on a specific information sign panel, a business establishment shall meet standards for "GAS", "FOOD", "LODGING", and "CAMPING" services in rules adopted by the department pursuant to guidelines in the Manual on Uniform Traffic Control Devices, as amended.

(2) (a) Each business identified on a specific information sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(b) If such a business violates any of these laws, it loses eligibility for business identification on a specific information sign.

(3) No business that owns any outdoor advertising structure in violation of the provisions of Title 75, chapter 15, part 1, may be eligible for business identification on a specific information sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131.

Section 7. **Tourist-oriented directional signs within right-of-way of primary highway system.** (1) Tourist-oriented directional signs may be erected and maintained within the right-of-way of the primary highway system to provide information to the traveling public concerning motorist services accessible from the primary highway system by way of an intersecting highway.

(2) Except as provided by rule, a tourist-oriented directional sign may not be erected if the place of business is readily visible from the main-traveled roadway.

Section 8. **Tourist-oriented directional signs — number of business signs — distances.** (1) The number of tourist-oriented directional signs is limited to three signs on an approach to an intersection.

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(2) No more than four business signs may be installed on a tourist-oriented directional sign.

(3) To qualify for business identification on a tourist-oriented sign, a business shall meet the eligibility criteria established in [section 10] and may not be located more than 5 miles from the primary highway, except as otherwise permitted by the department if no eligible business is located within the 5-mile limit.

Section 9. **Sign composition — design — conformity with standards and rules.** (1) A tourist-oriented directional sign must be rectangular in shape and must have a white legend and border on a blue background.

(2) A tourist-oriented directional sign may contain standard general service symbols to indicate a class of business, service, or activity.

(3) Business signs for specific businesses, services, and activities may be installed on a tourist-oriented directional sign. Nationally, regionally, or locally known commercial symbols, brands, or trademarks for service stations, restaurants, campgrounds, and motels must be used when applicable. Such commercial symbols, brands, and trademarks must be reduced to an appropriate size. No business sign may resemble any official warning or regulatory traffic sign, signal, or device.

(4) A tourist-oriented directional sign may contain no more than two lines of legend, including no more than one business sign, a separate directional arrow, and the distance to the specific business, service, or activity.

(5) The content of the legend must be limited to the identification of the business, service, or activity. The legend may not include promotional advertising.

(6) The legends, arrows, and business signs displayed on a tourist-oriented directional sign may be reflectorized.

(7) The erection and maintenance of tourist-oriented directional signs must conform to national standards promulgated by the U.S. secretary of transportation pursuant to 23 U.S.C. 131 and 23 U.S.C. 315 and rules adopted by the department under [section 15].

Section 10. **Business eligibility — criteria — restrictions.** (1) To be eligible for business identification on a tourist-oriented directional sign, a business establishment shall meet the following standards for a business, service, or activity:

(a) Gas, food, lodging, and camping services must:

(i) be licensed and approved by the state and local agencies regulating the particular type of business;

(ii) provide an acceptable level of service to the public;

(iii) be in continuous operation at least 8 hours a day, 5 days a week, including Saturday or Sunday; and

(iv) have a telephone and restroom facilities available for public use.

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(b) Recreation services must:

(i) be licensed and approved by state and local agencies as required by law;

(ii) provide to families and the public activities of interest in which people participate for purposes of physical exercise, collective amusement, or enjoyment of nature. Such activities may include hiking, golfing, skiing, boating, swimming, picnicking, fishing, and horseback riding.

(c) Tourist services must:

(i) be licensed as required by law;

(ii) be open to the public at least 8 hours a day, 5 days a week, including Saturday or Sunday, during the normal tourist season; and

(iii) provide a natural, recreational, historical, cultural, educational, or entertainment activity or a unique or unusual commercial or nonprofit activity, from which the major portion of income or visitors is derived during normal business seasons from motorists not residing in the immediate area of the activity.

(2) (a) Each business identified on a tourist-oriented directional sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(b) If a business violates any of these laws, it loses eligibility for business identification on a tourist-oriented directional sign.

(3) No business that owns any outdoor advertising structure in violation of the provisions of Title 75, chapter 15, part 1, may be eligible for business identification on a tourist-oriented directional sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131.

Section 11. **Motorist information sign program — department.** There is a motorist information sign program to be operated by a franchisee under the general supervision and control of the department.

Section 12. **Franchises.** (1) The department may grant a franchise by public negotiation or bid to qualified persons to establish and operate the motorist information sign program authorized under [section 11].

(2) A franchisee shall furnish, install, maintain, and replace motorist information signs for the benefit of businesses that provide motorist services for the general public and may lease space on the signs to eligible businesses.

(3) A franchisee shall comply with the provisions of [sections 1 through 10] and any other applicable state and federal laws and regulations.

Section 13. **Contract requirements.** All contracts made between the department and a franchisee must provide for:

(1) a requirement that the franchisee obtain liability insurance in an amount sufficient to jointly insure the state and the franchisee against all

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liability for claims for damages occurring wholly or in part because of the franchisee; and

(2) the standards for the size, design, erection, and maintenance that were adopted under [section 15].

Section 14. **Costs.** The department shall authorize reasonable fees to cover all costs incurred under the motorist information sign program. Fees must be paid under agreements negotiated between a franchisee and an advertiser unless otherwise provided in the contract between the department and the franchisee.

Section 15. **Rulemaking authority.** The department may adopt rules necessary to implement the provisions of [sections 1 through 14].

Section 16. **Restrictions.** The department may take no action under [sections 1 through 15] that may result in the loss to the state of any federal highway construction funds.

Section 17. **Federal requirements — conflict and accord.** If the secretary of the U.S. department of transportation finds any part of [sections 1 through 16] to be in conflict with federal requirements that are prescribed as a condition to the allocation of federal funds to the state, the conflicting part of [sections 1 through 16] is invalid only to the extent of the conflict and such finding may not affect the operation of the remainder of [sections 1 through 16] in its valid applications.

Section 18. Section 60-5-110, MCA, is amended to read:

**"60-5-110. Commercial enterprise or structure prohibited — exception.** *Except as provided in [section 12], no* commercial enterprise or structure shall be constructed or operated on the publicly owned right-of-way of a controlled-access highway or facility or on any publicly leased land used in connection therewith."

Section 19. Section 75-15-111, MCA, is amended to read:

**"75-15-111. Outdoor advertising prohibited in proximity to highway — exceptions.** (1) Outdoor advertising may not be erected or maintained which is within 660 feet of the nearest edge of the right-of-way and which is visible from any place on the main-traveled way of an interstate or primary system except:

(a) directional and other official signs and notices, which signs and notices include but are not limited to signs and notices pertaining to natural wonders and scenic and historical attractions, as authorized or required by law;

(b) signs, displays, and devices advertising the sale or lease of property upon which they are located;

(c) signs, displays, and devices advertising activities conducted on the property upon which they are located;

(d) signs, displays, and devices located in areas which are zoned industrial or commercial by a bona fide state, county, or local zoning authority;

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(e) signs, displays, and devices located in unzoned commercial or industrial areas, which areas shall be determined from actual land uses and by agreement between the department of highways and the secretary and defined by rules adopted by the commission. The exception granted by this subsection shall not apply to signs, displays, and devices located within an unzoned area in which the commercial or industrial activity used in defining the area has ceased for a period of 9 months.

(f) signs or displays advertising the cultural exhibits of nonprofit historical or arts organizations if the signs or displays conform with the standards provided in Title 23, Code of Federal Regulations, section 750, subpart B; *or*

*(g) signs that are consistent with the policy of this state and with the national policy set forth in 23 U.S.C. 131 and the regulations promulgated thereunder and that are designed to provide information in the specific interest of the traveling public as provided in [sections 3 through 5, 7 through 9, 11, and 12].*

(2) Outdoor advertising authorized under subsections (a), (d), and (e) of (1) of this section shall conform with standards contained in and shall bear permits required in rules which are adopted by the commission and this part.

(3) Outdoor advertising may not be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area if such outdoor advertising is or was erected with the purpose of its message being read from such main-traveled way and visible from such main-traveled way unless such outdoor advertising meets the criteria of subsections (a), (b), or (c) of (1) of this section. Should such outdoor advertising meet said criteria, it shall conform with standards contained in rules which are adopted by the commission and this part."

Section 20. **Effective date.** [This act] is effective July 1, 1989.

Approved April 14, 1989.

# CHAPTER NO. 538

[SB 137]

AN ACT TO ALLOW AN ELECTION TO FOREGO THE CARRYBACK OF A NET OPERATING LOSS AND APPLY A NET OPERATING LOSS ONLY AS A CARRYFORWARD FOR THE PURPOSES OF DETERMINING NET INCOME FOR CORPORATION LICENSE TAX OR CORPORATION INCOME TAX; AMENDING SECTIONS 15-31-114 AND 15-31-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-31-114, MCA, is amended to read:

**"15-31-114. Deductions allowed in computing income.** In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

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(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(b) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of *[section 3]*.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year, except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

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(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(7) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

(8) In lieu of the deduction allowed under subsection (7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of (b) of this subsection (8)."

Section 2. Section 15-31-406, MCA, is amended to read:

**"15-31-406. License tax sections incorporated by reference.** The provisions of the following sections of this chapter are incorporated into this part by reference and made a part hereof:

(1) that part of 15-31-101 which defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income shall not be taxed;

(2) sections 15-31-111 through 15-31-114, 15-31-117, 15-31-118, 15-31-141, 15-31-142 *[section 3]*, 15-31-301 through 15-31-313, 15-31-501 through 15-31-509, 15-31-525, 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", "license tax", "license fee", "corporation excise tax", or like words appear, referring to the tax imposed under part 1 of this chapter, there shall be substituted the words "income tax"."

Section 3. **Net operating losses — carryovers and carrybacks.** (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss carrybacks to the taxable period.

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(2) The term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection (6).

(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.

(4) A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating loss carryover to each of the seven taxable periods following the taxable period of the loss.

(5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior taxable periods to which the loss was carried. For purposes of the preceding sentence, the net income for the prior taxable period must be computed with the modification specified in subsection (6)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed may not be considered to be less than zero.

(6) The modifications referred to in subsection (2) are as follows:

(a) net operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

(c) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(7) A net operating loss deduction must be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(8) In the case of a merger of corporations, the surviving corporation may not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(10) The net operating loss deduction may not be allowed with respect to taxable periods that ended on or before December 31, 1970, but must be allowed only with respect to taxable periods beginning on or after January 1, 1971.

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(11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, apply to [section 3].

Section 6. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved April 14, 1989.

# CHAPTER NO. 539

[SB 146]

AN ACT TO REVISE THE ADOPTION STATUTES TO AUTHORIZE THE DEPARTMENT OF FAMILY SERVICES TO CONTRACT WITH LICENSED SOCIAL WORKERS AND LICENSED CHILD-PLACING AGENCIES TO CONDUCT INVESTIGATIONS CONCERNING PARENTAL ADOPTIVE PLACEMENTS AND TO CHARGE A FEE FOR SUCH INVESTIGATIONS; AND AMENDING SECTION 40-8-109, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-8-109, MCA, is amended to read:

**"40-8-109. Placement for adoption by parents.** (1) No parent may make a placement of a child for adoption with an individual who is not a stepparent or a member of the child's extended family unless the parent files with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement; and

(b) a relinquishment of parental rights to the prospective adoptive parents executed voluntarily and in accordance with 40-6-135(2) through (4).

(2) The notice of parental placement and the relinquishment shall be filed prior to a parent's placement of the child with an individual who intends to adopt the child. The notice of parental placement shall contain the following information:

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(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement and a relinquishment, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

*(4) The department may contract with licensed social workers and licensed child-placing agencies to conduct the investigations and prepare the report to the court ordered pursuant to subsection (3).*

*(5) The department may charge the prospective adoptive parents a fee, commensurate with costs, for the investigation and report.*

*(6)* Within 45 days of filing of the notice of parental placement and the relinquishment, the court shall schedule a hearing to consider the proposed placement.

*(7)* (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the department.

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

*(8)* If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

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*(9)* If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child."

Section 2. **Adoption services account.** There is an adoption services account in the special revenue fund. The fees collected by the department of family services under [this act] must be deposited into this account and may be used by the department for adoption service.

Approved April 14, 1989.

# CHAPTER NO. 540

[SB 204]

AN ACT TO GENERALLY REVISE AND CLARIFY THE UNIFORM ANATOMICAL GIFT ACT BY ADOPTING THE 1987 FORM OF THE ACT; AMENDING SECTIONS 50-5-212, 61-5-301, 72-17-102, 72-17-201, 72-17-202, 72-17-207, 72-17-208, 72-17-301, 72-17-311, AND 72-17-312, MCA; REPEALING SECTIONS 72-17-104, 72-17-203 THROUGH 72-17-206, 72-17-209, 72-17-211, AND 72-17-212, MCA; AND PROVIDING AN APPLICABILITY PROVISION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-5-212, MCA, is amended to read:

**"50-5-212. Organ procurement program required.** The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in *[section 13]*; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1)."

Section 2. Section 61-5-301, MCA, is amended to read:

**"61-5-301. Indication on driver's license of intent to make anatomical gift.** (1) The department of justice shall provide on each driver's license a space for indicating when the licensee has executed a document

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under *72-17-201* of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act.

(2) The department shall provide each applicant, at the time of application for a new driver's license or for a renewal, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally whether he wishes to make an anatomical gift.

(3) Each applicant must be given an opportunity to indicate in the space provided under subsection (1) his intent to make an anatomical gift.

(4) The department shall issue to every applicant who indicates such an intent a statement which, when signed by the licensee in the manner prescribed in *72-17-201*, constitutes a document of anatomical gift. This statement must be printed on a sticker that the donor may attach permanently to the back of his driver's license.

(5) The department shall also furnish the licensee a means of revoking the document of gift upon the license."

Section 3. Section 72-17-102, MCA, is amended to read:

**"72-17-102. Definitions.** *As used in this chapter the following definitions apply:*

(1) *"Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.*

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

*(4) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.*

*(5)* "Donor" means an individual who makes a gift of all or part of *the individual's* body.

*(6) "Enucleator" means an individual who is certified pursuant to 72-17-311 to remove or process eyes or parts of eyes.*

*(7)* "Hospital" means a *facility* licensed, accredited, or approved under the laws of any state *or a facility* operated *as a hospital* by the United States government, a state, or a subdivision *of a* state.

*(8)* "Ophthalmologist" means a licensed physician or surgeon who specializes in the treatment or correction of diseases of the eye.

*(9) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion* of a human body.

*(10)* "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, *joint venture*, association, or any other legal *or commercial* entity.

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*(11)* "Physician" or "surgeon" means *an individual* licensed or *otherwise* authorized to practice *medicine and surgery or osteopathy and surgery* under the laws of any state.

*(12) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.*

*(13)* "State" *means a* state, territory, *or* possession of the United States, *the District of Columbia, or the Commonwealth of Puerto Rico.*

*(14)* "Technician" means an individual who *is certified by the state board of medical examiners to remove or process a part.*"

Section 4. Section 72-17-201, MCA, is amended to read:

**"72-17-201. Making, amending, revoking, and refusing to make anatomical gifts by an individual.** (1) *An* individual *who is at least* 18 years of age may*:*

*(a) make an anatomical gift for any of the purposes stated* in 72-17-202*;*

*(b) limit an anatomical gift to one or more of those purposes; or*

*(c) refuse to make an anatomical gift.*

*(2) An anatomical gift may be made only by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and must state that it has been so signed.*

*(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2). Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.*

*(4) A document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator to carry out the appropriate procedures.*

*(5) An anatomical gift by will takes effect upon the death of the testator, whether or not the will is probated. If, after the testator's death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.*

*(6) A donor may amend or revoke an anatomical gift not made by will only by:*

*(a) a signed statement;*

*(b) an oral statement made in the presence of two individuals;*

*(c) any form of communication during a terminal illness or injury addressed to a physician or surgeon; or*

*(d) the delivery of a signed statement to a specified donee to whom a document of gift had been delivered.*

*(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6).*

*(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of any person after the donor's death.*

*(9) (a) An individual may refuse to make an anatomical gift of the individual's body or part by:*

*(i) a writing signed in the same manner as a document of gift;*

*(ii) a statement attached to or imprinted on a donor's motor vehicle operator's license; or*

*(iii) any other writing used to identify the individual as refusing to make an anatomical gift.*

*(b) During a terminal illness or injury, the refusal may be an oral statement or other form of communication.*

*(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under [section 11] or on a removal or release of other parts under [section 12].*

*(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9).*"

Section 5. Section 72-17-202, MCA, is amended to read:

"**72-17-202. Persons who may become donees — purposes for which anatomical gifts may be made.** (1) The following persons may become donees of *anatomical* gifts for the purposes stated:

(a) *a* hospital, surgeon, physician, *or procurement organization* for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(b) *an* accredited medical or dental school, college, or university for education, research, advancement of medical or dental science; *or*

(c) *a designated* individual for therapy or transplantation needed by *that individual.*

*(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by a hospital.*

*(3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift by a member of a*

*class having priority to act is opposed by a member of the same class or a prior class under [section 11], the donee may not accept the anatomical gift.*"

Section 6. Section 72-17-207, MCA, is amended to read:

"**72-17-207. Examination — autopsy — liability.** *(1) An anatomical* gift authorizes any *reasonable* examination necessary to assure medical acceptability of the gift for the purposes intended.

*(2) The provisions of this chapter are subject to the laws of this state governing autopsies.*

*(3) A hospital, physician, surgeon, coroner, enucleator, technician, nurse, or other person who acts in accordance with this chapter or with the applicable anatomical gift act of another state or attempts in good faith to do so is not liable for that act in a civil action or criminal proceeding.*

*(4) An individual who makes an anatomical gift pursuant to 72-17-201 or [section 11] and the individual's estate are not liable for any injury or damage that may result from the making or use of the anatomical gift.*"

Section 7. Section 72-17-208, MCA, is amended to read:

"**72-17-208. Delivery of document of gift.** (1) *Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.*

*(2)* If *an anatomical* gift is made to a *designated* donee, the document *of gift,* or *a* copy, may be delivered to the donee to expedite the appropriate procedures after death. The document *of gift,* or *a* copy, may be deposited in any hospital, *procurement organization,* or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of *an* interested *person,* upon or after the donor's death, the person in possession shall *allow the interested person to examine or copy* the document *of gift.*"

Section 8. Section 72-17-301, MCA, is amended to read:

"**72-17-301. Rights and duties at death.** (1) *Rights of a donee created by an anatomical gift are superior to rights of others under [section 11(1)], except with respect to autopsies. A* donee may accept or reject *an anatomical* gift. If the donee accepts *an anatomical* gift of the entire body, *the donee,* subject to the terms of the gift, *may allow* embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and *before* embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the *person* under obligation to dispose of the body.

(2) The time of death *must* be determined by a physician *or surgeon* who *attends* the donor at death or, if none, the physician *or surgeon* who certifies the death. *Neither the* physician *or surgeon* who *attends* the donor at death *nor* the physician *or surgeon* who *determines* the *time of* death *may* participate in the procedures for removing or transplanting a part

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*unless the document of gift designates a particular physician or surgeon pursuant to 72-17-201(4).*

*(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes after determination of death by a physician or surgeon."*

Section 9. Section 72-17-311, MCA, is amended to read:

**"72-17-311. Eye enucleations — enucleators — qualifications.** (1) Eye enucleations for purposes of anatomical gifts may be performed:

(a) by a licensed physician or surgeon; or

(b) by *an enucleator* trained in eye enucleation.

(2) An acceptable course in eye enucleation must include the anatomy and physiology of the eye, instruction in maintaining a sterile field during the enucleation procedure, and use of appropriate instruments and sterile procedures for removal and preservation of corneal tissue.

(3) Certification of satisfactory completion of a course in eye enucleation must be provided by the ophthalmologist who teaches the course. This certification qualifies *an enucleator* to perform eye enucleations for a period of 3 years from the date of completion of the course."

Section 10. Section 72-17-312, MCA, is amended to read:

**"72-17-312. Approval of eye banks.** Any bank or storage facility that furnishes to the department written evidence of its membership and certification and reports and recommendations for future compliance, granted by the eyebank association of America, is approved for receipt and storage of eye tissue for the term of such membership and certification and is eligible during such term to be a donee of eye tissue pursuant to 72-17-202."

Section 11. **Making, revoking, and objecting to anatomical gifts by others.** (1) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

(a) the spouse of the decedent;

(b) an adult son or daughter of the decedent;

(c) either parent of the decedent;

(d) an adult brother or sister of the decedent;

(e) a grandparent of the decedent; and

(f) a guardian of the person of the decedent at the time of death.

(2) An anatomical gift may not be made by a person listed in subsection (1) if:

(a) a person in a prior class is available at the time of death to make an anatomical gift;

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(b) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(c) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) must be made by:

(a) a document of gift signed by the person; or

(b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(4) An anatomical gift by a person authorized under subsection (1) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(5) A failure to make an anatomical gift under subsection (1) is not an objection to the making of an anatomical gift.

Section 12. **Authorization by coroner or local public health official.** (1) The coroner may release and permit the removal of a part from a body within that official's custody, for transplantation or therapy, if:

(a) the official has received a request for the part from a hospital, physician, surgeon, or procurement organization;

(b) the official has made a reasonable effort, taking into account the useful life of the part, to locate and examine the decedent's medical records and inform persons listed in [section 11(1)] of their option to make, or object to making, an anatomical gift;

(c) the official does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in [section 11(1)];

(d) the removal will be by a physician, surgeon, or technician; but in the case of eyes, by one of them or by an enucleator;

(e) the removal will not interfere with any autopsy or investigation;

(f) the removal will be in accordance with accepted standards; and

(g) cosmetic restoration will be done, if appropriate.

(2) If the body is not within the custody of the coroner, the local public health officer may release and permit the removal of any part from a body in the local public health officer's custody for transplantation or therapy if the requirements of subsection (1) are met.

(3) An official releasing and permitting the removal of a part shall maintain a permanent record of the name of the decedent, the person

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making the request, the date and purpose of the request, the part requested, and the person to whom it was released.

Section 13. **Routine inquiry and required request — search and notification.** (1) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift pursuant to [section 11(1)]. The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in 72-17-202 or if there are medical or emotional conditions under which the request would contribute to severe emotional distress. An entry must be made in the medical record of the patient, stating the name and affiliation of the individual making the request and the name, response, and relationship to the patient of the person to whom the request was made. The department shall adopt rules to implement this subsection.

(2) The following persons shall make a reasonable search for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(a) a law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes is dead or near death; and

(b) a hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(3) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (3)(a) and the individual or body to whom it relates is taken to a hospital, the hospital must be notified of the contents and the document or other evidence must be sent to the hospital.

(4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made pursuant to [section 11(1)] or a release and removal of a part has been permitted pursuant to [section 12], or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(5) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

Section 14. **Coordination of procurement and use.** Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts.

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Section 15. **Sale or purchase of parts prohibited.** (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a felony and upon conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 5 years, or both.

Section 16. **Applicability.** [This act] applies to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after October 1, 1989.

Section 17. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 19. **Repealer.** Sections 72-17-104, 72-17-203 through 72-17-206, 72-17-209, 72-17-211, and 72-17-212, MCA, are repealed.

Section 20. **Codification instruction.** [Sections 11 through 15] are intended to be codified as an integral part of Title 72, chapter 17, and the provisions of Title 72, chapter 17, apply to [sections 11 through 15].

Approved April 14, 1989.

## CHAPTER NO. 541

[SB 272]

AN ACT TO EXTEND THE SUNSET PROVISION RELATING TO THE STATE MENTAL HEALTH INVOLUNTARY COMMITMENT LAWS; AMENDING SECTION 18, CHAPTER 376, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18, Chapter 376, Laws of 1987, is amended to read:

"Section 18. **Termination.** This act terminates July 1, *1997*."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 14, 1989.

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# CHAPTER NO. 542

[SB 311]

AN ACT CREATING A SELF-SUFFICIENCY TRUST ACCOUNT TO BE ADMINISTERED BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PROVIDE CARE AND TREATMENT FOR CERTAIN DEVELOPMENTALLY DISABLED, MENTALLY ILL, OR PHYSICALLY HANDICAPPED PERSONS.

STATEMENT OF INTENT

This bill requires a statement of intent because [section 3] grants rulemaking authority to the department of social and rehabilitation services to administer the self-sufficiency trust account.

The rules should provide for the orderly administration of the trust account. Because the department of social and rehabilitation services will be administering the trust account for the department of institutions, contractual arrangements must be made between these departments. These arrangements must include but are not limited to:

(1) provision for the department of institutions to review and approve life care agreements for mentally ill beneficiaries;

(2) provision for the approval of payments from the trust account for mentally ill beneficiaries; and

(3) procedures for reporting to the department of institutions on the financial condition of the trust account.

The rules should also provide for the development of procedures and criteria for reviewing and approving the life care agreements between the self-sufficiency trust and the department of social and rehabilitation services. These procedures and criteria should also provide for the termination of the agreements.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(2) "Self-sufficiency trust" means a trust created by a nonprofit corporation that is a 501-C-3 organization under the United States Internal Revenue Code of 1954, as amended, and that was organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, for the purpose of providing for the care and treatment of one or more persons who are residents of this state and are developmentally disabled, mentally ill, physically handicapped, or otherwise eligible for department services, as defined by the department.

Section 2. **Creation of self-sufficiency trust account.** (1) There is created a self-sufficiency trust account in the state treasury. The state

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treasurer shall deposit to the credit of the trust account money received from a self-sufficiency trust for that purpose. The state auditor shall direct payments from the trust account upon claims certified by the director of the department.

(2) The assets of the trust account must be preserved, invested, and expended in the manner and for the purposes provided in [section 3]. At the end of each fiscal year, the unexpended account balance must carry forward to the next fiscal year and may not revert to the state general fund.

Section 3. **Administration of trust account.** (1) The department may accept money from a self-sufficiency trust for deposit in the self-sufficiency trust account pursuant to an agreement with the self-sufficiency trust naming one or more beneficiaries who are residents of this state and are developmentally disabled, mentally ill, physically handicapped, or otherwise eligible for department services, as defined by the department. The agreement must specify the care or treatment to be provided for each named beneficiary. Money in the trust account must be accounted for separately for each named beneficiary. The department of institutions shall contract with the department to administer the trust account for beneficiaries who are mentally ill.

(2) (a) The department shall adopt rules to administer the trust account.

(b) The money in the trust account may be spent by the department, pursuant to its rules, only to provide care or treatment for the named beneficiary in accordance with the terms of the agreement.

(c) If the director of the department determines that the money in the trust account for a named beneficiary cannot be used for the care and treatment of the beneficiary in a manner consistent with the rules of the department and the agreement or upon request of the self-sufficiency trust, the remaining money in the trust account for the named beneficiary, together with any accumulated interest, must be promptly returned to the self-sufficiency trust that provided the money for deposit in the trust account.

(3) The trust account money must be deposited in the state treasury and invested as required by law and the earnings credited to the trust account.

Section 4. **Benefits not affected.** Receipt by a beneficiary of supplemental services as a result of the self-sufficiency trust account or of care and treatment provided by the trust may not in any way reduce, impair, or diminish the benefits to which the beneficiary is otherwise entitled by law.

Section 5. **Special account.** There is created within the self-sufficiency trust account a special account for the disabled. The director of the department may accept money from any source for deposit into the special account. The money in the special account must be used by the department, subject to appropriation, for the purpose of providing for the care and treatment of low-income developmentally disabled, mentally ill,

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and physically handicapped persons or low-income persons otherwise eligible for department services, as defined by the department.

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 14, 1989.

# CHAPTER NO. 543

[SB 314]

AN ACT PROHIBITING DISCRIMINATION BY PRIVATE CLUBS; EXCLUDING FRATERNAL ORGANIZATIONS FROM THE DEFINITION OF "PUBLIC ACCOMMODATION"; REVISING THE DEFINITION OF "PUBLIC ACCOMMODATION" TO PROHIBIT DISCRIMINATION BY ENTITIES THAT ARE NOT DISTINCTLY PRIVATE; ESTABLISHING CRITERIA FOR DISTINCTLY PRIVATE CATEGORIZATION; PROHIBITING DISCRIMINATION BY ALCOHOL LICENSEES; PROHIBITING THE ISSUANCE AND RENEWAL OF ALCOHOL LICENSES TO ENTITIES THAT DISCRIMINATE; AMENDING SECTIONS 49-2-101, 49-2-304, AND 49-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 49-2-101, MCA, is amended to read:

**"49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

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(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(14) "National origin" means ancestry.

(15) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(16) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(17) *(a)* "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern,

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nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

*(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (17), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.*

(18) "Staff" or "commission staff" means the staff of the commission for human rights."

Section 2. Section 49-2-304, MCA, is amended to read:

**"49-2-304. Discrimination in public accommodations.** *(1)* Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

*(a)* to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin;

*(b)* to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin.

*(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, age, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.*"

Section 3. Section 49-3-204, MCA, is amended to read:

**"49-3-204. Licensing.** *(1) A* state or local governmental agency may *not* grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter.

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*(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.*"

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 14, 1989.

# CHAPTER NO. 544

[SB 322]

AN ACT TO REVISE THE MEDIA CONFIDENTIALITY ACT BY CLARIFYING THAT A PERSON WHO TESTIFIES IN A LAWSUIT MAY WAIVE THE JOURNALIST SOURCE PRIVILEGE ONLY BY VOLUNTARILY DISCLOSING THE SOURCE; AND AMENDING 26-1-903, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 26-1-903, MCA, is amended to read:

"**26-1-903. Waiver of privilege.** (1) *Except* as provided in subsection (2), *dissemination* in whole or in part does not constitute a waiver of provisions of 26-1-902.

(2) If the person claiming the privilege *testifies*, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, he *does not waive* the provisions of 26-1-902 *unless the person voluntarily agrees to waive the privilege or voluntarily discloses the source in the course of his testimony.* Except as provided in this subsection, the provisions of 26-1-902 may not be waived."

Approved April 14, 1989.

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# CHAPTER NO. 545

[SB 338]

AN ACT RELATING TO VICTIM RESTITUTION; AUTHORIZING THE CREATION OF A COUNTY RESTITUTION FUND CONSISTING OF RESTITUTION PAYMENTS MADE TO VICTIMS WHOSE LOCATIONS ARE UNKNOWN; AND PROVIDING THAT THE FUND BE USED TO MAKE RESTITUTION PAYMENTS TO VICTIMS ON BEHALF OF OFFENDERS WHO PERFORM COMMUNITY SERVICE WORK.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Victim's location unknown — payments to restitution fund — use of restitution fund.** (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund. Subject to the availability of money in the fund, if the whereabouts of a victim whose restitution payments were deposited in the county restitution fund become known, the county shall refund to the victim payments that were deposited in the fund.

(2) Money in the restitution fund may be used to provide payments on behalf of offenders who are ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain employment or are unable to obtain employment sufficient to make restitution payments and sustain themselves and their dependents. The offender may perform community service, and for each hour of community service performed, the victim shall receive an amount equal to the minimum hourly wage from the county restitution fund. A judge may order an offender to perform community service work for restitution payments upon a finding that the offender would not otherwise be able to make restitution payments and that there are funds available in the county restitution fund for payments to the victim.

(3) Moneys in the county restitution fund that are due to a victim under this part must be paid to the crime victims compensation account, as defined in 53-9-109, if payments have been made to or on behalf of the victim from the account. Payment from the county restitution fund to the crime victims compensation account may be made only from moneys paid by the offender who caused the injury or death that resulted in the payment from the account.

Approved April 14, 1989.

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# CHAPTER NO. 546

[SB 348]

AN ACT TO EXCLUDE MEMBERS OF AN EMPLOYER'S IMMEDIATE FAMILY FROM COVERAGE UNDER THE RESTAURANT, BAR, AND TAVERN WAGE PROTECTION ACT; AMENDING SECTIONS 39-3-603 THROUGH 39-3-605, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-3-603, MCA, is amended to read:

**"39-3-603. Definitions.** For the purposes of this part, the words and phrases used herein have the following meaning:

(1) "Bar" or "tavern" means a *place* where liquor or beer is sold to be drunk on the premises.

(2) "Beer" means any beverage so defined in the Montana Alcoholic *Beverage* Code.

(3) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "Employee" means a person who works for wages or salary in the service of an employer. *The term does not include a member of an employer's immediate family.*

*(7) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of a person operating a business as a restaurant, bar, or tavern.*

*(8)* "Liquor" *has the same meaning as specified* in *16-1-106.*

*(9)* "Person" includes any establishment, firm, partnership, corporation, person, or association of persons.

*(10)* "Restaurant" means a public eating *place* where food is prepared and served for human consumption on the premises."

Section 2. Section 39-3-604, MCA, is amended to read:

**"39-3-604. Bond to be filed — bond requirements.** (1) *Except as provided in 39-3-605 and subsection (4) of this section, a* person operating a business as a restaurant, bar, or tavern is required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner. *The* bond shall at all times be kept in full force and effect, and any cancellation or revocation *of the bond* or withdrawal of the

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sureties *from the bond* is grounds for enjoining the operation of business, as provided for in 39-3-607, until a new bond of like tenure and effect *is* filed and approved.

(2) The bond required by subsection (1) of this section *must* be filed with the commissioner. The state of Montana *must* be named as the obligee, with good and sufficient sureties to be approved by the attorney general.

(3) *The* bond *must* be conditioned to assure that the employees who perform labor or other personal services are guaranteed their wages in the event the person ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the department as a result of payroll taxes.

(4) Except as provided in 39-3-605(2), this section does not apply to any person who has operated the same restaurant, bar, or tavern continuously since October 1, 1980."

Section 3. Section 39-3-605, MCA, is amended to read:

**"39-3-605. Waiver of bond — new or additional bond — exemption.** (1) After 3 years of compliance with this part, the commissioner shall waive the provisions of 39-3-604 for any person showing compliance with the applicable provisions of the Fair Labor Standards Act and all the applicable laws administered by the department.

(2) Notwithstanding 39-3-604(4) and subsection (1) of this section, the commissioner may require a person operating a restaurant, bar, or tavern, including a person who has been in business since October 1, 1980, or for over 3 years, to file a new bond or a bond of a greater amount than double the semimonthly payroll whenever the person operating a restaurant, bar, or tavern defaults on the payment of wages, payroll taxes, or workers' compensation premiums.

*(3) A person who owns and operates a restaurant, bar, or tavern is exempt from the provisions of 39-3-604 to the extent that 39-3-604 would otherwise require filing of a bond based on the payroll and wages attributable to members of the immediate family of the person who owns and operates the restaurant, bar, or tavern."*

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective dates.** (1) [Section 4 and this section] are effective on passage and approval.

(2) [Sections 1 through 3] are effective July 1, 1989.

Approved April 14, 1989.

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# CHAPTER NO. 547

[SB 389]

AN ACT ALLOWING A PERSON WHOSE USE OF SPECIAL FUEL IS PREDOMINANTLY FOR AGRICULTURAL AND NONHIGHWAY USE BUT WHO OWNS OR OPERATES ONE OR MORE PASSENGER CARS OR PICKUPS TO ELECT TO APPLY FOR A SPECIAL FUEL TAX-PREPAID AUTHORIZATION IN LIEU OF A SPECIAL FUEL USER'S PERMIT; AND AMENDING SECTIONS 15-70-301 THROUGH 15-70-306, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-301, MCA, is amended to read:

**"15-70-301. Definitions.** As used in this part, the following definitions apply:

*(1) "Authorization" means an uncanceled special fuel tax prepaid authorization issued by the department.*

*(2)* "Bond" means:

(a) a bond duly executed by a special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of *the* special fuel dealer or special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel dealer or special fuel user, under terms and conditions the department of revenue may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

*(3)* "Cardtrol" or "keylock" means any unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

*(4)* "Department" means the department of revenue.

*(5)* "Motor vehicle" means any vehicle which is self-propelled upon the highways.

*(6)* "Person" means and includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation; whenever used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, means and includes the partners or members thereof and, as applied to joint-stock companies and corporations, the officers thereof.

*(7)* "Public roads and highways of this state" means all streets, roads, highways, and related structures:

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*(a)* built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision *of the state;*

*(b)* dedicated to public use;

*(c)* acquired by eminent domain; or

*(d)* acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision *of the state.*

*(8)* "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles propelled upon the public *roads and* highways within the state of Montana. The term includes compressed natural gas.

*(9) (a)* "Special fuel dealer" means:

*(i)* any person in the business of handling special fuel who delivers any part *of the fuel* into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him;

*(ii)* any person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

*(iii) any person* who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by *the* dealer.

*(b)* For *purposes of subsection (9)(a),* the term "fuel supply tank or tanks" does not include cargo tanks, even though fuel is withdrawn directly *from cargo tanks* for propulsion of the vehicle.

*(10)* "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the propulsion of motor vehicles owned or controlled by him upon the highways of this state.

*(11)* "Use" means:

*(a)* the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while *the* vehicle is within this state; or

*(b)* the consumption by a special fuel user of special fuels in propulsion of a motor vehicle on the highways of this state."

Section 2. Section 15-70-302, MCA, is amended to read:

**"15-70-302. Special fuel dealer's licenses and special fuel user's permits required — exceptions.** (1) It *is* unlawful for any person to act as a special fuel dealer in this state unless *the* person is the holder of an uncanceled fuel dealer's license issued to him by the department.

(2) Every special fuel user shall obtain annually from the department, prior to the use of special fuel for the propulsion of a motor vehicle or

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vehicles in this state, a special fuel user's permit. *Except* as provided in subsection (5), *a special fuel user* shall at all times display the original or a reproduced copy of the permit in each vehicle operated by him upon the *public roads and* highways. *The permit or copy* shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user *is* responsible for reproducing clear and legible copies of the permit.

(3) A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile, provided the person purchases special fuel, tax paid, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

(4) Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit *is* not transferable and *is* valid for 90 days. Permits will be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(5) A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection (2) if:

(a) the motor vehicle operated by him is a vehicle that is part of a motor vehicle fleet based in Montana that is proportionally registered under the provisions of 61-3-711 through 61-3-733;

(b) he obtains a registration card issued by the department of highways indicating the special fuel user's permit number; and

(c) the registration card indicating the special fuel user's permit number is carried in the vehicle and is available for inspection.

*(6) A person whose use of special fuel is predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or light trucks may obtain annually from the department an authorization as provided in [section 7].*"

Section 3. Section 15-70-303, MCA, is amended to read:

"**15-70-303. Application for license, permit, or authorization.** (1) Application for a special fuel dealer's license, special fuel user's permit, *or authorization* shall be made to the department unless otherwise provided *in this part.*

(2) The application shall be filed upon a form prepared and furnished by the department. The application *must* contain information the department *considers* necessary."

Section 4. Section 15-70-304, MCA, is amended to read:

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**"15-70-304. Bonding, release of surety, and additional bond.** (1) Except as provided *in this section*, *a* special fuel dealer's license or special fuel user's permit *may not* be issued to any person or continued in force unless *the* person has furnished bond, as defined in 15-70-301 and in *a* form as the department may require, to secure its compliance with this part and the payment of any and all taxes, interest, and penalties due and to become due *under this part*. The department shall waive the bond requirement of any special fuel user not subject to subsection (2)(a) or (2)(b). Upon application, the department shall waive the bond requirement of any public contractor licensed under Title 15, chapter 50, who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity.

(2) The total amount of the bond or bonds required of any special fuel dealer shall be equivalent to twice his estimated monthly tax payments and the total amount of the bond or bonds required of any special fuel user shall be equivalent to twice his estimated quarterly tax payments as provided *in this part*, determined as the department *considers* proper; provided, however, that the total amount of the bond or bonds *may not* be less than:

(a) $5,000 for any special fuel user awarded a contract in accordance with 15-70-321;

(b) $500 for any other special fuel user who:

(i) possesses special fuel in bulk storage in this state on which the tax has not been paid;

(ii) requests a special fuel user's permit to be reissued after being canceled for cause; or

(iii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327; and

(c) $1,000 for a special fuel dealer.

(3) Any surety on a bond furnished by a special fuel dealer or special fuel user as provided *in this section* shall be released and discharged from any and all liability to the state accruing on *the* bond after the expiration of 30 days from the date upon which *the* surety *has* lodged with the department a written request to be released and discharged, but this provision *may* not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the 30-day period. The department shall, promptly upon receiving *a release* request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user, on or before the expiration of the 30-day period, *files* a new bond in accordance with the requirements of this section or *makes* a deposit in lieu *of a bond* as provided in 15-70-301*(2)*, the department shall cancel the special fuel dealer's license or special fuel user's permit.

(4) The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301*(2)* if, in its opinion, the security of

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the surety bond *previously* filed by *the* special fuel dealer or special fuel user or the market value of the properties deposited as security by *the* special fuel dealer or special fuel user become impaired or inadequate, and upon failure of the special fuel dealer or special fuel user to give *a* new additional surety bond or to deposit additional securities within 30 days after being requested so to do by the department, *the* department shall cancel his license."

Section 5. Section 15-70-305, MCA, is amended to read:

**"15-70-305. Issuance of license, permit, or authorization — grounds for refusal — hearing.** (1) *Except as provided in subsection (3), upon* receipt of the application and bond in proper form, the department shall issue to the applicant a license or permit to act as a special fuel dealer or special fuel user. *Each special fuel dealer's license or special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.*

*(2) Except as provided in subsection (3), upon receipt of the application in proper form, the department shall issue to the applicant an authorization. A holder of an authorization is not required to furnish bond as provided under 15-70-304. The authorization must be issued annually and is valid from the date of its issuance through December 31 of the calendar year, unless a motor vehicle for which the tax is prepaid is sold, or until suspended or revoked for cause or otherwise canceled.*

*(3) The department may refuse to issue a special fuel dealer's license, special fuel user's permit, or authorization to any person:*

*(a) who formerly held a license, permit, or authorization that, prior to the time of filing application, has been revoked for cause;*

*(b) who is not the real party in interest and the license, permit, or authorization of the real party in interest has been revoked for cause prior to the time of filing the application; or*

*(c) upon other sufficient cause being shown.*

*(4)* Before refusal *to issue a license, permit, or authorization,* the department shall grant the applicant a hearing and shall grant him at least 10 days' written notice of the time and place *of hearing.*

*(5) A* special fuel dealer's license, special fuel user's permit, *or authorization is not* transferable."

Section 6. Section 15-70-306, MCA, is amended to read:

**"15-70-306. Revocation, suspension, and cancellation.** (1) The department may revoke the license, permit, *or authorization* of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking *a* license, permit, *or authorization,* the department shall notify the licensee or permittee of its intention, by certified mail addressed to his last-known address shown in the files of the department, requiring him to appear before the department on a day and hour specified in *the* notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the license, permit, or *authorization*

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should not be revoked; provided, however, that at any time prior to and pending *the* hearing, the department may in the exercise of reasonable discretion suspend *the* license, permit, *or authorization.*

(2) Upon revocation by the department of any license, permit, *or authorization,* the holder shall immediately surrender the *license, permit, or authorization* to the department for cancellation."

Section 7. **Authorization for certain uses — disposition of proceeds — penalties.** (1) (a) A person who purchases, tax-free, special fuel in bulk and whose use of special fuel is predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or pickups, each having a licensed gross vehicle weight of 10,000 pounds or less and powered by special fuel, may elect to apply to the department, as provided in 15-70-303, for an authorization. The authorization requires the holder to prepay an annual tax on the special fuel placed in bulk storage and used, in part, in the holder's special fuel-powered vehicles, rather than apply for a special fuel user's permit.

(b) If a holder elects to obtain an authorization, he shall prepay the tax at the rate of $120 for each passenger car or pickup within the weight limit specified in subsection (1)(a). The tax must be paid on a calendar-year basis and must be prorated from the date of authorization for each vehicle. A person whose purchases of special fuel are predominantly for highway or nonagricultural use does not qualify for the special fuel tax.

(c) Whenever the holder of an authorization ceases to farm within this state, he shall notify the department within 15 days after discontinuance. The holder shall surrender to the department the authorization issued to him by the department. The department shall refund the portion of the prepaid tax attributable to the remaining portion of the calendar year.

(2) All taxes collected must be remitted to the department or deposited directly in the state special revenue fund for use by the department of highways.

(3) A person violating any provision of subsection (1) is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment for not less than 30 days or more than 6 months or by both fine and imprisonment. The fine and imprisonment provided in this subsection are in addition to any other penalty imposed by any other provision in this chapter.

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 7].

Section 10. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 14, 1989.

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# CHAPTER NO. 548

[SB 395]

AN ACT TO EXEMPT THE STUDENT ASSOCIATIONS OF THE UNIVERSITY SYSTEM FROM STATE LAWS RELATING TO THE PROCUREMENT OF SUPPLIES AND SERVICES; AND AMENDING SECTIONS 18-4-132 AND 18-8-103, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 18-4-132, MCA, is amended to read:

**"18-4-132. Application.** (1) Except as provided in 18-4-313, which applies retroactively to telecommunications equipment and systems and data processing equipment acquired under existing contracts, leases, or rental agreements, and subject to the terms of such agreements, this chapter applies only to contracts solicited or entered into after January 1, 1984, unless the parties agree to its application to a contract solicited or entered into prior to January 1, 1984.

(2) This chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any contract; but this chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. Nothing in this chapter or in rules adopted thereunder prevents any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to construction contracts.

*(4) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.*"

Section 2. Section 18-8-103, MCA, is amended to read:

**"18-8-103. Exemptions.** This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health-care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards; *or*

*(5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations.*"

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Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 14, 1989.

# CHAPTER NO. 549

[SB 42]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE ADMINISTRATIVE ENFORCEMENT OF CHILD SUPPORT TO CONFORM THE LAWS TO FEDERAL REGULATIONS; PROVIDING AN AUTOMATIC EXTENSION OF SERVICES UPON TERMINATION OF PUBLIC ASSISTANCE; GRANTING EQUAL STATUS TO NONPUBLIC ASSISTANCE CASES; DECREASING THE RESPONSE TIMES FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR TEMPORARY SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-208, 40-5-201 THROUGH 40-5-208, 40-5-213, 40-5-221 THROUGH 40-5-226, 40-5-241 THROUGH 40-5-244, 40-5-246, 40-5-251 THROUGH 40-5-255, AND 40-5-257, MCA.

STATEMENT OF INTENT

A statement of intent is required for Senate Bill No. 42 because it amends several sections within Title 40, chapter 5, part 2, on child support enforcement services. These amendments are proposed to bring state law into compliance with federal law. The department of revenue is granted an extension of authority to adopt rules in accordance with this bill that conform with federal laws and regulations.

The legislature intends that the department adopt rules that:

(1) reduce aid to families with dependent children (AFDC) expenditures by ensuring that the parent or other person responsible pays for the care, support, or maintenance of a child under the provisions of 40-5-202(1);

(2) ensure child support enforcement services will continue to be provided to families that cease to receive public assistance under AFDC, without requiring an application or payment of a fee;

(3) establish the terms and conditions of providing continued services for families no longer receiving public assistance; and

(4) establish procedures for the discontinuance of child support enforcement services when the custodial parent:

(a) ceases or fails to cooperate with the department as provided under 40-5-204; or

(b) takes an action to prejudice the rights of the department under 40-5-202(4) and (5).

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-5-201, MCA, is amended to read:

**"40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States *and for whom:*

*(a) support rights are assigned under 53-2-613;*

*(b) a public assistance payment has been made;*

*(c) child support enforcement services are being provided by the department under 40-5-203; or*

*(d) a referral for interstate services is received by the department, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action request by a Title IV-D agency of another state.*

(2) "Department" means the department of revenue.

(3) "Director" means the director of the department of revenue or his authorized representative.

*(4)* "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

*(5) "Obligee" means:*

*(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or*

*(b) a public agency of this or another state having the right to receive current or accrued support payments.*

*(6) "Obligor" means a person, including an alleged father, who owes a duty of support.*

*(7) "Parent" means the natural or adoptive parent of a child.*

(8) "Public assistance" means any type of monetary or other assistance *for a child,* including medical and foster care benefits. *The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.*

*(9)* "Support debt" or "support obligation" means *the amount created by*:

(a) the failure to provide support to a child under the laws of this *or any other* state or *a support order*; or

(b) *a support order for spousal maintenance if* the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

*(10) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:*

*(a) a district court of this state;*

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*(b) a court of appropriate jurisdiction of another state;*

*(c) an administrative agency pursuant to proceedings under this part; or*

*(d) an administrative agency of another state with a hearing function and process similar to those of the department under this part.*

*(11) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."*

Section 2. Section 40-5-202, MCA, is amended to read:

**"40-5-202. Department of revenue — powers and duties regarding collection of support debt.** (1) *The department may take action* under the provisions of this part, the abandonment or nonsupport statutes, *the Uniform Parentage Act established in Title 40, chapter 6, part 1, and* other appropriate *state and federal* statutes to *ensure* that the parent or other person responsible pays for the care, support, or maintenance of a child *if the department:*

*(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;*

*(b) is providing child support enforcement services under 40-5-203; or*

*(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action by a Title IV-D agency of another state.*

(2) *If the department is providing child support enforcement services for a child under this part,* the department *becomes* trustee of any cause of action of the child or the *obligee* to recover support due to *the child or* obligee from *the obligor. The department* may bring and maintain the action in *its* own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any *obligee to endorse and cash* any and all drafts, checks, money orders, or other negotiable instruments received by the department *on behalf of a child.*

(4) For purposes of prosecuting any civil action, the department is a real party in interest *if it is providing child support enforcement services under this part.* No obligee *may* act to prejudice the rights of the department *while such services are being provided.*

(5) *If child support enforcement services are being or have been provided under this part, no* agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from *the* obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court *or an administrative agency* for modification of any order on the same basis as a party to that action *is* entitled to do.

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(7) The department *is* subrogated to the right of the child *or obligee* to maintain any civil action or execute any administrative remedy *available* under the laws of *this or any other* state *to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.*

(8) *If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:*

*(a) the amount of public assistance paid; or*

*(b) the amount due under the support order.*

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts *and records*, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 3. Section 40-5-203, MCA, is amended to read:

**"40-5-203. Child support enforcement services.** (1) The department may accept applications for *child* support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule *the terms and conditions by which services are provided under this section.*

(3) The department may not charge the applicant a fee as compensation for services rendered in establishment of or enforcement of support obligations. However, the department may charge a fee to the *obligor*. This fee must be in addition to the support payment. The department shall by rule establish reasonable fees commensurate with the cost of enforcement support services to be paid by the *obligor*. When payments are scheduled to be paid on an installment basis, a portion of the collection fee owed to the department shall be added to each payment. If the *obligor* makes a payment in an amount that is less than the support payment plus the collection fee for that payment, the department may deduct a percentage of the total sum collected which represents the department's standard proportion. The department may, upon a showing of necessity, waive or defer any such fee.

*(4) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department may continue to provide services after public assistance is no longer being paid, without requiring an application. An obligee's acceptance of continued services constitutes the obligee's agreement to the terms and conditions set for applicants by the department under this section.*

*(5) The department may terminate services under this section if it:*

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*(a) receives a written request from the obligee for termination of services;*

*(b) receives notice that the child is receiving public assistance; or*

*(c) determines that an obligee has violated any term or condition set by the department for an applicant under this section.*"

Section 4. Section 40-5-204, MCA, is amended to read:

"**40-5-204. Cooperation by obligee.** *An obligee shall cooperate with the department in:*

*(1) identifying and locating the obligor;*

*(2) establishing the paternity of a child;*

*(3) obtaining support or any other payments due the obligee and child; and*

*(4) obtaining reimbursement for previously paid public assistance, if any.*"

Section 5. Section 40-5-205, MCA, is amended to read:

"**40-5-205. Payment of support money collected to support enforcement and collections unit — notice.** If *the department gives written notice* to the *obligor,* to the clerk of the court, *or to an administrative agency that issued a support order,* that the *child* for whom a support *order* exists *is* receiving *services from the department,* then any support money *must be paid to the department.*"

Section 6. Section 40-5-206, MCA, is amended to read:

"**40-5-206. Central unit for information and administration — cooperation enjoined — availability of records.** (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) *If services are provided to a child under this part, the department may request and all state, county, and city agencies, officers, and employees must provide on request any information concerning the location, income, and assets of an obligor.*

(3) Except as provided in 31-3-127, any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act."

Section 7. Section 40-5-207, MCA, is amended to read:

"**40-5-207. Department authorized to enforce maintenance awards.** *If* a judgment or order creating a child support obligation also contains a judgment or order for the support of a *spouse or* former spouse

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*who* is the custodial parent of the child, the department may collect and enforce spousal support under this part."

Section 8. Section 40-5-208, MCA, is amended to read:

**"40-5-208. Medical support obligation enforcement.** (1) In *any proceeding* initiated pursuant to this part, the department shall require *the obligor* to secure and maintain health insurance coverage for each dependent child, at a cost not to exceed 5% of net income, whenever such health insurance is available through *the obligor's* employment. However, if a *support* order *has been entered that also orders the obligor to secure and maintain health insurance coverage for the child,* the department shall enforce the obligation as ordered.

(2) If the department determines that an *obligor* has failed to maintain health insurance coverage required by *a support* order, it may issue a notice commanding the *obligor* to appear at a hearing held by the department and show cause why a sum of not more than $100 should not be assessed for each month health insurance coverage is not secured or maintained. If the department finds, after hearing or *the obligor's* failure to appear, that *the obligor has not secured or maintained* health insurance coverage in accordance with the *support* order, the department may assess against the *obligor* not more than $100 for each month health insurance coverage has not been secured or maintained. Such amounts may be enforced by warrant for distraint provided for in 40-5-241.

(3) *If an obligor* who has been served with notice under this section appears before the department and shows that health insurance coverage in accordance with the *support* order:

(a) has been secured and maintained continuously since the date of the order, the department shall dismiss the pending action; or

(b) has not been secured or continuously maintained but such coverage is presently in effect, the department shall suspend the pending action for a period of 12 months.

(4) At the end of the suspension period, the department may schedule a hearing. If at this hearing the department finds that during the suspension period health insurance coverage:

(a) has been continuously maintained, the department shall dismiss the pending action and the *obligor* will not be assessed under this section; or

(b) has not been continuously maintained, the department may enter a final order requiring the *obligor* to pay the sum assessed in accordance with this section for each month coverage was not maintained.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 9. Section 40-5-213, MCA, is amended to read:

**"40-5-213. Financial statements by obligor — penalty.** (1) *If the department is providing child support enforcement services under this part and has reasonable cause to believe that a support obligation is owed, an*

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*obligor, upon written request, shall* complete a statement, under oath, *stating the obligor's:*

*(a)* current monthly income;

*(b)* total income over the past 36 months;

*(c)* the number of dependents for whom *the obligor* is providing support;

*(d)* the amount *the obligor* is contributing toward the support of *a child for whom the department is providing services;*

*(e)* current monthly living expenses; and

*(f)* all other information pertinent to *the obligor's financial condition.*

*(2) The department may require additional financial statements from the obligor during the period the department is providing services to the child.*

*(3)* Failure to comply with this section is a misdemeanor."

Section 10. Section 40-5-221, MCA, is amended to read:

**"40-5-221. Debt to state by obligor — limitations.** (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of *a child* creates a debt due and owing the state of Montana by the *obligor* in an amount equal to the amount of public assistance money so paid. In the case of an *obligor who is an* adoptive parent, *a* debt for public assistance paid may *not* accrue prior to the date of adoption.

(2) *If a support order has been entered, the support debt created by this section may not exceed the amount of the order.*

(3) *If* a child has been placed in foster care and a written agreement for payment of support *exists between the obligor* and any state agency, the *support* debt *is* limited to the amount provided for in the agreement. However, if a *support* order is or has been entered, the provisions of the order prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

*(5) The department may establish and collect a debt created under this section in a proceeding that is in addition to and independent of the subrogation created by 40-5-202(7) and the assignment under 53-2-613.*"

Section 11. Section 40-5-222, MCA, is amended to read:

**"40-5-222. Support debt based upon support order — notice — contents — action to collect.** (1) The department may issue a notice of a support debt accrued or accruing based upon *a support* order. The notice may be served upon the *obligor* in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within *20* days of the date of receipt.

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(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any *support* order;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt; *and*

(e) a statement that the *obligor* is entitled to a fair hearing.

(3) Action to collect the support debt by distraint and seizure and sale *is* lawful after *20* days from the date of service upon the *obligor* or *20* days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the *obligor* may request a fair hearing as provided in 40-5-226."

Section 12. Section 40-5-223, MCA, is amended to read:

**"40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing.** (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of *a child.* The notice of liability *must* be served upon the *obligor* in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the *obligee* and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the *obligor* make answer within *20* days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before *20* days from the date of the service the support debt *must* be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the *obligor* will be subject to distraint and seizure and sale.

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(3) If no answer is had by the department to the notice of liability on or before *20* days of the date of service, the support debt *must* be assessed and determined subject to the computation and the department may issue a warrant for distraint authorizing a collection action under this part.

(4) If the *obligor*, within *20* days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the *obligor* may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing *must* establish the *obligor's* obligation, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt."

Section 13. Section 40-5-224, MCA, is amended to read:

**"40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect.** (1) If the department reasonably believes that the *obligor* is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to 40-5-241 during the pendency of the fair hearing or thereafter, whether or not appealed. No further action may be taken on the warrant until final determination after fair hearing *or* appeal. The department shall make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The *obligor* may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or thereafter, and in such case warrants issued *must* be released. If the decision resulting from the hearing is in favor of the *obligor*, all warrants issued *must* be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing."

Section 14. Section 40-5-225, MCA, is amended to read:

**"40-5-225. Notice of financial responsibility - temporary and final support obligations — administrative procedure.** (1) *(a) In the absence of a support order, the* department may serve *an obligor with* a notice of financial responsibility *alleging a child's need for support and the amount of the need and* requiring *the obligor* to appear and show cause at a hearing held by the department why the *obligor should not be finally ordered to pay the amount alleged in the notice.*

*(b) The notice must state:*

*(i) the names of the obligee and child;*

*(ii) the amount of current and future support to be paid each month for the child;*

*(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;*

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*(iv) that the obligor is entitled to a fair hearing under 40-5-226.*

*(2) If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's monthly support responsibility must be based on the greater of:*

*(a) the amount of public assistance payable under Title 53, chapter 4; or*

*(b) the alleged need.*

*(3) If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.*

*(4) (a) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered, the department may issue to the obligor a notice of temporary support obligation.*

*(b) The notice must contain:*

*(i) the names of the child and the person or agency having the custodial care of the child;*

*(ii) an amount for temporary monthly support determined as provided in subsection (2);*

*(iii) a statement that the obligor may request a hearing at which the obligor may show that a different support amount is appropriate or that establishment of a support obligation is inappropriate under the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.*

*(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice or the order for a temporary support order will be entered in the amount stated in the notice; and*

*(v) a statement that the temporary support order will terminate upon the entry of a district court support order. If the district court order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the district court order for the same period, but excess amounts may not be refunded. If the district court determines that a periodic support obligation is not proper, any amount paid under the temporary support order must be refunded to the obligor.*

*(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:*

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*(i) reconciled without the marriage having been dissolved;*

*(ii) made joint application to the department to vacate the order or dismiss the proceeding; and*

*(iii) provided proof that the marriage has been resumed.*

*(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice under this section if the parties subsequently separate.*

*(6) Any notice of financial responsibility and the notice of temporary support obligation must be served in the same manner prescribed for the service of a summons in civil action in accordance with the Montana Rules of Civil Procedure."*

Section 15. Section 40-5-226, MCA, is amended to read:

**"40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) *At the discretion of the hearing officer, the* administrative hearing may be held:

*(a)* in the county of residence or other county convenient to the *obligor or obligee; or*

*(b) in the county in which the department or any of its offices are located.*

(3) If a hearing is requested, it *must* be scheduled within *20* days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the *obligor* under *the notice and shall enter a final decision and order in accordance with such determination.*

(5) If the *obligor* fails to appear at the hearing *or fails to timely request a hearing,* the hearing officer, *upon a showing of valid service,* shall enter a decision and order declaring the *amount* stated in the notice *to be final.*

*(6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.*

*(7) Within 20 days of the hearing, the* hearing officer shall enter *a final decison and order.* The determination of the hearing officer *constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.*

*(8) If a support order is established under this part, any party may file a verified petition with the department alleging facts constituting a material change of circumstances. Upon the filing of such petition, the department shall issue an order to the nonpetitioning party to appear and show cause why the decision previously entered should not be prospectively modified.*

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*The order to appear and show cause, together with a copy of the verified petition, must be served by the petitioner upon all other parties in the manner provided by this part. Upon receipt of proof of service, the department shall schedule a hearing* not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(9) *A support debt* determined pursuant to this section *is* subject to collection action without further necessity of action by the hearing officer.

*(10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure."*

Section 16. Section 40-5-241, MCA, is amended to read:

**"40-5-241. Warrant for distraint.** *(1) Twenty-one* days after receipt or refusal of *a* notice of *a support* debt under provisions of 40-5-222 or *21* days after service of notice of *a support* debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue a warrant for distraint based on the amount of the support debt.

*(2)* The warrant is subject to *the provisions of this part and* the provisions of 15-1-701, 15-1-704, 15-1-708, and 15-1-709, with references to "tax" taken to mean "support debt" and references to "taxpayer" taken to mean *"obligor"*."

Section 17. Section 40-5-242, MCA, is amended to read:

**"40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages.** *A* person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the *support* debt *that* is the basis of the distraint or assignment of wages or the value of the distrained property, whichever is less, together with costs, interest, and reasonable attorney fees, *if the person or entity:*

*(1) fails or refuses to deliver property pursuant to the order;*

*(2) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien;*

*(3) fails or refuses to surrender upon demand property distrained under 40-5-241; or*

*(4) fails or refuses to honor an assignment of wages presented by the department."*

Section 18. Section 40-5-243, MCA, is amended to read:

**"40-5-243. Release of excess to obligor.** *If* any person, firm, corporation, association, political subdivision, or department of the state has in

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its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person *or entity* may release the excess to the *obligor without liability under this part.*"

Section 19. Section 40-5-244, MCA, is amended to read:

"**40-5-244. Banks and savings and loan associations — service effective only as to branch office served.** In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the *obligor* in the particular branch upon which service is made."

Section 20. Section 40-5-246, MCA, is amended to read:

"**40-5-246. Release of distraint and return of seized property — effect.** *At any time, the* department may release a distraint on all or part of the property of the *obligor* or order the return of seized property without liability if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the same or other property."

Section 21. Section 40-5-251, MCA, is amended to read:

"**40-5-251. Debt payment schedule.** *At any time after notice to the obligor, the* department may set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the *obligor.*"

Section 22. Section 40-5-252, MCA, is amended to read:

"**40-5-252. Interest on debts due — waiver.** *(1) The department may collect interest* on any support debt due and owing to *it* at the statutory interest rate payable on judgments recovered in the courts of this state.

*(2)* No provision of this part may be construed to require the department to maintain interest balance due accounts. *The department may waive interest* if waiver would facilitate the collection of the debt."

Section 23. Section 40-5-253, MCA, is amended to read:

"**40-5-253. Administrative findings and order — administrative remedies — judicial review.** (1) It is the intent of this part that administrative findings and orders be subject to judicial review, but administrative remedies *must* be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Such review *must* be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in this part may be construed to abridge or in any way affect the *obligor's* right to counsel during any and all judicial or administrative proceedings pursuant to this part."

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Section 24. Section 40-5-254, MCA, is amended to read:

**"40-5-254. Statutory limitations.** *Support debts* ensuing as a result of determinations made through the administrative procedures described in this part are subject to statutory limitations as set forth in Title 27, chapter 2."

Section 25. Section 40-5-255, MCA, is amended to read:

**"40-5-255. Charging off child support debts as uncollectible.** *(1)* Any support debt due the department from *an obligor*, which *debt* the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. *If* a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

*(2)* At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the *support* debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant for distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period."

Section 26. Section 40-5-257, MCA, is amended to read:

**"40-5-257. Assignment of earnings to be honored — effect.** *(1)* Any person, firm, corporation, association, political subdivision, or department of the state employing *an obligor* shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to *a support* order presented by the department. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department.

*(2)* Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department *is* released from liability for improper receipt of money under an assignment of earnings upon return of any money so received."

Section 27. Section 40-4-208, MCA, is amended to read:

**"40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.** (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

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(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; *or*

*(iii) upon application by the department of revenue, whenever the department of revenue is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under [section 3 of Senate Bill No. 129]. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.*

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances."

Section 28. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 29. **Coordination instruction.** If [section 3 of Senate Bill No. 129] is not passed and approved, [section 27 of this act] is void.

Section 30. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 15, 1989.

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# CHAPTER NO. 550

[SB 70]

AN ACT TO IMPLEMENT THE WORK PROVISIONS OF THE FEDERAL FAMILY SUPPORT ACT OF 1988; TO ESTABLISH A JOB OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS) PROGRAM FOR RECIPIENTS OF THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; TO REQUIRE MANDATORY PARTICIPATION OF RECIPIENTS IN THE NEW PROGRAM; TO PROVIDE SANCTIONS AGAINST RECIPIENTS WHO FAIL TO PARTICIPATE IN THE PROGRAM OR TO ACCEPT SUITABLE EMPLOYMENT; TO REQUIRE NECESSARY CHILD CARE ASSISTANCE; AMENDING SECTION 40-4-204, MCA; REPEALING SECTIONS 53-2-701 THROUGH 53-2-709, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 15] grants the department of social and rehabilitation services authority to adopt rules necessary to implement the provisions of this bill.

It is the intent of the legislature that the department establish a program, consistent with the provisions of the federal Family Support Act of 1988, to assure that recipients of aid to families with dependent children obtain the education, training, and employment needed to avoid long-term dependency on welfare. The program should be a mandatory program and, in the biennium beginning July 1, 1990, should include enrollment of at least 7% of all recipients of aid to families with dependent children who are not exempt from participation under [section 6].

In establishing the program, the department should adopt rules for:

(1) determining participation in the program;

(2) providing services and activities to program participants;

(3) determining eligibility for child care assistance under [section 9];

(4) selecting providers of services and activities under the program;

(5) evaluating the performance and effectiveness of the program;

(6) imposing sanctions as provided in [section 10]; and

(7) resolving disputes involving an individual's participation in the program.

The legislature expressly intends that the department comply with federal requirements and adopt such methods of administration as may be necessary to obtain federal funds for the program in the maximum amount possible.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** It is the purpose of [this act] to establish a program, consistent with the provisions of the federal Family Support Act of 1988, to assure that recipients of the aid to families with dependent children program obtain the education, training, and employment needed to avoid long-term welfare dependency.

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Section 2. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Aid to families with dependent children" has the same meaning as provided in 53-4-201.

(2) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(3) "Family Support Act of 1988" means the federal Family Support Act of 1988, Public Law 100-485, as amended.

(4) "JOBS program" or "program" means the job opportunities and basic skills training program established in [section 3].

Section 3. **JOBS program established — purpose.** (1) The department shall establish and administer a job opportunities and basic skills training (JOBS) program that meets the requirements of section 201 of the federal Family Support Act of 1988 [42 U.S.C. 602(a)(19), 681 through 686].

(2) The purpose of the program is to provide recipients of aid to families with dependent children the education, training, and employment that will help them avoid long-term welfare dependency.

Section 4. **Services and activities.** (1) Under the program provided for in [section 3], the department shall make available a broad range of services and activities to assist recipients of aid to families with dependent children. Such services and activities may include:

(a) appropriate educational activities, including:

(i) high school education or its equivalent, combined with training as needed;

(ii) basic and remedial education to help participants achieve a basic literacy level; and

(iii) education for individuals with limited English language proficiency;

(b) job skills training;

(c) job readiness activities to help prepare participants for work;

(d) job development and job placement;

(e) group and individual job search activities as provided for in [42 U.S.C. 682(g)];

(f) on-the-job training;

(g) work supplementation programs as provided for in [42 U.S.C. 682(e)]; and

(h) community work experience programs as provided for in [42 U.S.C. 682(f)].

(2) In addition to the services and activities provided in subsection (1), the department may offer to participants under the program:

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(a) postsecondary education in appropriate cases; and

(b) such other education, training, and employment activities as may be determined necessary.

Section 5. **Participation requirements.** (1) Except as otherwise provided in this section and [section 6], the department may require individuals to participate in the JOBS program as a condition of their eligibility for aid to families with dependent children.

(2) To the extent that the program is available and that state resources permit, the department shall:

(a) require recipients of aid to families with dependent children with respect to whom the state guarantees child care in accordance with section 402(g) of the Social Security Act [42 U.S.C. 602(g)] to participate in the program; and

(b) allow applicants for and recipients of aid to families with dependent children who are not required under subsection (2)(a) to participate in the program to do so on a voluntary basis.

Section 6. **Exemptions.** (1) An individual may not be required to participate in the JOBS program if the individual:

(a) is ill, incapacitated, or of advanced age;

(b) is needed in the home because of the illness or incapacity of another member of the household;

(c) is the parent or other relative who is personally providing care for a child under 3 years of age, except as otherwise provided in administrative rules adopted by the department;

(d) is employed for 30 or more hours a week;

(e) is a child who is under the age of 16 or attends an elementary, secondary, or vocational school on a full-time basis;

(f) is pregnant and it has been medically verified that the child is expected to be born in the month in which participation in the program would otherwise be required. Such individual may not be required to participate in the program within the 6-month period immediately following that month.

(g) resides in an area of the state where the program is not available; or

(h) is for any other reason exempt from participating in the program pursuant to state or federal regulations.

(2) If a family is eligible for aid to families with dependent children because of the unemployment of the parent who is the principal wage earner, subsection (1)(c) applies to only one parent.

Section 7. **Alternatives to program participation.** (1) In lieu of participation in the JOBS program, the department may require that an individual participate, on a full-time basis, in educational activities directed

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toward the attainment of a high school diploma or its equivalent if the individual:

(a) is a custodial parent as defined in administrative rules adopted by the department;

(b) has not attained 20 years of age; and

(c) has not successfully completed a high school education.

(2) Attendance in good standing at an institution of higher education or a school of vocational or technical training may constitute satisfactory participation in the program under [section 5].

Section 8. **Assessment — participation agreement — case management.** (1) The department shall make an initial assessment of the needs, skills, and employability of each participant in the JOBS program. On the basis of such assessment, the department shall, in consultation with the participant, develop an employability plan as required in [42 U.S.C. 682(b)(1)(B)].

(2) Following the development of an employability plan for a participant, the department may require the participant to enter into an agreement that specifies such matters as:

(a) the participant's obligations under the program;

(b) the duration of participation; and

(c) the services and activities to be provided under the program during the period of participation.

(3) The department may assign a case manager to each participant and the participant's family. The case manager shall assist the participant and his family in obtaining services that may be needed to assure effective participation in the program.

Section 9. **Child care assistance.** In accordance with sections 301 and 302 of the federal Family Support Act of 1988 [42 U.S.C. 602(g)], the department shall provide necessary child care assistance to:

(a) each individual participating in the program established under [section 3]; and

[b) any individual whose family has ceased to receive aid to families with dependent children as a result of increased hours or income from employment or because of loss of federally prescribed earned income disregards.

Section 10. **Sanctions.** An individual who without good cause fails to participate in the JOBS program as required or who without good cause refuses to accept suitable employment shall lose eligibility for aid to families with dependent children as provided in [42 U.S.C. 602(a)(19)(G)].

Section 11. **Performance standards — monitoring and evaluation of program.** (1) In addition to standards of performance established pursuant to section 487 of the federal Family Support Act of 1988 [42 U.S.C.

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687], the department shall provide standards to further measure the performance and effectiveness of the program. The standards must consist of an objective, quantifiable measure of the extent to which participation in the program increases the employment and earnings of participants and decreases their dependency on public assistance.

(2) In order to determine whether performance standards are met, the department shall monitor and evaluate the program on the basis of appropriate factors that must include the following:

(a) the placement of participants in unsubsidized employment;

(b) the retention of participants in unsubsidized employment;

(c) the increase in earnings, including hourly wages, of participants due to placement in unsubsidized employment;

(d) the reduction in the number of individuals and families receiving aid to families with dependent children; and

(e) the amount of reductions in payments for aid to families with dependent children.

(3) In monitoring and evaluating the performance of the program, the department shall determine the reasons for high and low levels of performance, administrative efficiencies, and program coordination.

Section 12. **Coordination requirements — consolidation of programs authorized.** (1) The governor shall assure that program activities under [this act] are coordinated with programs administered under the federal Job Training Partnership Act and any other relevant employment, training, education, or work program in this state.

(2) The governor may consolidate the program established in [section 3] with other programs in order to maximize coordination of program activities as required in subsection (1) and to prevent overlapping and duplication of services.

(3) Where adult basic education programs exist, basic and remedial education services provided for in [section 4] must be coordinated, through contracts or cooperative agreements, with state or local agencies having responsibility for programs administered under the federal Adult Education Act, Public Law 100-297.

Section 13. Section 40-4-204, MCA, is amended to read:

**"40-4-204. Child support — orders to address health insurance — warning of withholding procedures.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

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(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and his educational needs;

(e) the financial resources and needs of the noncustodial parent; and

(f) for the purposes of determining a minimum amount for support, the amount received by children under the AFDC program *provided in Title 53, chapter 4, part 2.*

(2) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state the reasons for not ordering child support.

(3) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(4) Each district court judgment or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing order for child support entered after October 1, 1985, must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures."

Section 14. **Repealer.** Sections 53-2-701 through 53-2-709, MCA, are repealed.

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Section 15. **Rulemaking authority.** The department of social and rehabilitation services may adopt rules necessary to implement the provisions of [this act].

Section 16. **Compliance with federal requirements.** The department shall establish and administer the JOBS program in compliance with federal requirements and adopt such methods of administration as may be necessary to obtain federal funds for the program in the maximum amount possible.

Section 17. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. **Audit required.** The legislative auditor shall conduct a performance audit of the program established in [section 3] and report the results of the audit to the 53rd legislature.

Section 19. **Effective dates.** (1) [Sections 1 through 8, 10, 13, 14 and 16 through 18] are effective July 1, 1990.

(2) [Section 9] is effective April 1, 1990.

(3) [Sections 11, 12, 15, and this section] are effective on passage and approval.

Approved April 15, 1989.

# CHAPTER NO. 551

[SB 106]

AN ACT CLARIFYING THE AUTHORITY OF THE GOVERNOR TO ISSUE A DEATH WARRANT WHEN EXECUTION OF THE DEATH SENTENCE HAS BEEN SUSPENDED BECAUSE THE PERSON TO BE EXECUTED IS A PREGNANT WOMAN; AND AMENDING SECTION 46-19-204, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-19-204, MCA, is amended to read:

**"46-19-204. Proceedings following determination regarding pregnancy.** If it is found by the inquiry that the woman is not pregnant, the warden of the Montana state prison shall execute the judgment. If it is found that the woman is pregnant, the warden shall suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue *a death* warrant appointing a day for the execution of the judgment. *The warrant must recite the conviction, the judgment, the method of execution,*

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*that execution of judgment was suspended due to pregnancy, that the governor is satisfied that the woman is no longer pregnant, the appointed date for the execution, and the duration of the warrant."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 15, 1989.

# CHAPTER NO. 552

[SB 108]

AN ACT CLARIFYING THE PROCEDURE FOR EXECUTION OF A DEATH SENTENCE; PROVIDING A TIME FOR CHOOSING THE METHOD OF EXECUTION; PROVIDING THAT THE SELECTION, TRAINING, AND IDENTITY OF THE EXECUTIONER ARE CONFIDENTIAL; PROVIDING FOR A DESCRIPTION OF THE CONTENT OF THE DEATH WARRANT AND FOR ITS RETURN; AMENDING SECTION 46-19-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-19-103, MCA, is amended to read:

**"46-19-103. Execution of death sentence.** (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than *20* or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice. *A defendant who wishes to choose execution by lethal injection shall do so at the hearing at which an execution date is set, and if he does not, the option to choose death by lethal injection is waived.*

*(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must*

*be delivered to the warden of the state prison. The warrant must be directed to the warden and recite the conviction, judgment, method of execution, appointed date of execution, and the duration of the warrant.*

*(5)* The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection *(6)*, select the person to perform the execution, and the warden or his designee shall supervise the execution. *The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.*

*(6)* An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

*(7) Within 20 days after* the execution, the warden shall return the death warrant *to the clerk of the court from which it was issued, noting on the warrant the* time, mode, and manner in which it was executed."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1989.

## CHAPTER NO. 553

[SB 249]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO CREATE A JOINT FAIR AND CIVIC CENTER COMMISSION; CLARIFYING THE DUTIES OF A COUNTY FAIR COMMISSION; AUTHORIZING A COUNTY FAIR COMMISSION TO LEASE COUNTY FAIRGROUNDS AND BUILDINGS; AMENDING SECTIONS 7-21-3406, 7-21-3407, AND 7-21-3409, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is necessary to clarify and revise the general authority and powers of county fair commissions that supervise and manage fairgrounds and buildings during the course of the year and to coordinate the roles of county building commissions in areas which have civic center buildings on or contiguous to the fairgrounds.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Authorization to create a joint fair and civic center commission.** (1) The board of county commissioners shall have the power to create a joint fair and civic center commission for the management and operation of fairgrounds and civic centers within the county.

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(2) The board of county commissioners of a county, upon application from the regularly appointed county fair commission and county building commission, may by resolution create a joint fair and civic center commission.

(3) The joint fair and civic center commission is vested with the full powers granted to the county fair commission and the county building commission.

Section 2. **Organization of joint fair and civic center commission.** (1) The members of the county fair commission and county building commission shall constitute the joint fair and civic center commission and shall act as a unified board.

(2) The joint fair and civic center commission shall meet during the month of December of each year. The commission shall elect a chairman, vice-chairman, and secretary for the commission.

(3) Subsequent meetings may be held as necessary for the conduct of the duties outlined in [section 4].

(4) The joint fair and civic center commission shall have power to employ a secretary, whom they may vest with managerial powers, and they shall also appoint a treasurer. The office of secretary may be combined with that of treasurer.

(5) The commission shall ensure that:

(a) all records and accounts are properly kept, supervised, and approved;

(b) proper vouchers accompany all disbursements of money; and

(c) the records are open to the public at all reasonable hours.

Section 3. **Term of office.** The term of office of each commissioner must coincide with his term of office on the county fair commission or the county building commission.

Section 4. **Duties of joint commission.** The duties of the joint county fair and civic center commission are the same as the duties of the county fair commission and the county building commission.

Section 5. **Preparation of county fair or joint county fair and civic center budget.** (1) To raise the revenue necessary to hold a county fair and to manage the operation of the fairgrounds and its buildings and the civic center, the county fair commission or the joint fair and civic center commission shall meet during the first week of May of each year and prepare a budget for the management and operation of the fair, the fairgrounds and its buildings, and the civic center for the following year.

(2) The joint commission shall deduct from the budget the probable income from the annual county fair and other events and exhibitions to be held at the complex during the following year.

(3) The secretary of the fair commission or the joint commission shall certify to the board of county commissioners the amount of the budget and

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the amount of revenue expected to be raised by the county for these purposes and shall file a certified copy thereof with the clerk of the board of county commissioners on or before June 1 of each year.

Section 6. **Meeting on county fair and civic center budgets.** The board of county commissioners shall meet with the members of the joint fair and civic center commission before the third week of July of each year to jointly consider the budget proposed by the county fair commission or joint fair and civic center commission and authorize approval or suggest such amendments or modifications as the county commissioners think proper and desirable.

Section 7. **Effect of failure of county commissioners to meet or take action.** If the county commissioners fail to hold a joint meeting or fail to take any action, the budget certified by the secretary of the fair commission or the joint fair and civic center commission must be approved without further action and the sum of money apportioned to the county must be the sum to be raised by special levy for this purpose under 7-21-3410 through 7-21-3412.

Section 8. **General authority of county commissioners.** Nothing herein may be construed to limit the general authority of the county commissioners established in 7-5-2101.

Section 9. Section 7-21-3406, MCA, is amended to read:

**"7-21-3406. Powers of county fair commission.** *By resolution of the board of county commissioners, the* county fair commissioners shall have control and operation of the fair and the supervision and management of the fairgrounds and also the leasing of buildings and fairgrounds *on a continuous basis throughout the fiscal year* and shall return to the fair fund of the county all revenue obtained from the leasing or renting of the same."

Section 10. Section 7-21-3407, MCA, is amended to read:

**"7-21-3407. Duties of county fair commission.** *(1) The* commission shall do all things necessary to hold a successful *annual* county agricultural fair in their respective counties, *including:*

*(a) employment of labor;*

*(b) awarding of prizes;*

*(c) making and signing of exhibition contracts;*

*(d) charging admission and entrance fees; and*

*(e) everything necessary in conducting the continuing operation of the county fairgrounds and buildings.*

*(2) The commission* shall have charge of all fairgrounds and fair property."

Section 11. Section 7-21-3409, MCA, is amended to read:

**"7-21-3409. Lease of county fairgrounds and buildings.** (1) Boards of county commissioners *or county fair commissions* are hereby

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authorized to lease county fairgrounds and buildings thereon on such terms as they shall deem proper.

(2) In the event same are leased for entertainment purposes, the county commissioners or county fair commission shall collect an amount deemed proper by them.

(3) No lease may be executed unless the lessee gives bond or public liability and property damage insurance, or both, as may be required by the board of county commissioners or the county fair commission.

(4) No lease shall be executed unless the lessee *agrees* to furnish adequate police protection over all property so leased. Any lease shall be subject to immediate cancellation by the board or commission in case the lessee fails to maintain order or to properly police the grounds.

(5) All money received from the leasing of fairgrounds shall be deposited in the fair fund of the county.

(6) Nothing herein shall be construed to prevent county commissioners or the *county* fair commission from allowing schools to use fairgrounds for athletic or other public school purposes."

Section 12. **Effective date.** [This act] is effective July 1, 1989.

Approved April 15, 1989.

# CHAPTER NO. 554

[SB 276]

AN ACT ESTABLISHING THE BOARD OF PERSONNEL APPEALS AS A REVIEW BOARD FOR WAGE CLAIMS; REVISING WAGE CLAIM PROCEDURES; INCLUDING ALL PREVAILING WAGE CASES UNDER WAGE CLAIM REVIEW PROCEDURES; AMENDING SECTIONS 18-2-407, 39-3-201, AND 39-3-212, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-3-201, MCA, is amended to read:

**"39-3-201. Definitions.** The following are the definitions used for the purpose of this part:

*(1) "Board" means the board of personnel appeals provided for in 2-15-1705.*

*(2)* "Commissioner of labor" refers to the director, commissioner, or chief of the department *of labor and industry* as *the* department is defined by law, or any person or persons designated by him for the purpose of this part.

*(3) "Department" means the department of labor and industry as provided for in 2-15-1701.*

*(4)* "Employ" means permit or suffer to work.

*(5)* "Employee" includes any person who works for another for hire.

*(6)* "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States.

*(7)* "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly and shall include bonus, piecework, tips, and gratuities of any kind."

Section 2. **Hearing.** (1) When the department determines that a wage claim exists and if it fails to settle the claim with the parties, it shall cause the matter to be brought to a hearing before a department hearings officer. The hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that the hearings officer is not bound by statutory or common-law rules of evidence.

(2) The decision of the hearings officer is final unless further review is initiated pursuant to [section 3] within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause.

Section 3. **Appeal to board.** If a party is aggrieved by the decision of the hearings officer, he may appeal the decision to the board of personnel appeals. The hearing before the board is for review only, and the submission of new or cumulative evidence is not allowed unless the board finds that good cause is shown for the failure to produce the evidence before the hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to each interested party at his last-known address, and to the department. The decision is final unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision.

Section 4. Section 39-3-212, MCA, is amended to read:

**"39-3-212. Court enforcement of administrative decision.** *A decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if judicial review is not sought,* may be enforced by application by the commissioner to a district court for an order or judgment enforcing the *decision.* The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the *administrative decision.*"

Section 5. Section 18-2-407, MCA, is amended to read:

**"18-2-407. Forfeiture for failure to pay prevailing wages.** (1) Any contractor, subcontractor, or employer who shall pay workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the contracting agency the sum of $25 a day for each worker underpaid.

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(2) Whenever it shall appear to the contracting agency or to the Montana commissioner of labor that there are insufficient moneys due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. Nothing in this part shall prevent the individual worker who has been underpaid *or the commissioner of labor on behalf of all the underpaid workers* from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 39, chapter 3, part 2, and the provisions of Title 39, chapter 3, part 2, apply to [sections 2 and 3].

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Section 9. **Applicability.** [This act] applies to all wage claims filed with the department after July 1, 1989.

Approved April 15, 1989.

# CHAPTER NO. 555

[SB 305]

AN ACT ALLOWING A STATE LAND LESSEE WHO WISHES TO ENTER THE LAND IN THE FEDERAL CONSERVATION RESERVE PROGRAM TO VOLUNTARILY TERMINATE THE STATE LEASE PRIOR TO THE EXPIRATION DATE SO THAT THE LEASE, UPON RENEWAL, MAY RUN CONCURRENTLY WITH THE FEDERAL PROGRAM; PROVIDING THAT A VOLUNTARILY TERMINATED LEASE IS SUBJECT TO THE SAME COMPETITIVE BIDDING PROCESS AS A RENEWAL LEASE; AMENDING SECTIONS 77-6-109, 77-6-110, 77-6-204, AND 77-6-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Voluntary termination of lease to allow concurrence with federal conservation reserve program — competitive bidding required.** (1) A lessee of state land who wishes to enter the state land in the federal conservation reserve program may request voluntary termination of the remainder of the lease prior to scheduled expiration in order to seek a renewal lease that will run concurrently with the federal program. The lessee shall apply for voluntary termination to the department on a form prescribed by the department. The form must specify:

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(a) the name of the lessee and a designation of the leased land for which voluntary termination is sought;

(b) the scheduled termination date of the lease; and

(c) the term of eligibility of the land under the federal conservation reserve program.

(2) Upon receipt of a proper application, the department shall terminate the remainder of the lease. When a request for voluntary termination is granted, the department shall fulfill the notification requirements of 77-6-204, and the lease is subject to the same competitive bidding process as renewal leases under 77-6-205. However, the lessee requesting voluntary termination retains the preference right allowed under 77-6-205.

(3) If a lease renewal is granted pursuant to 77-6-205 to a lessee who has requested voluntary termination under this section, the term of the renewal lease must coincide with the term of eligibility under the federal conservation reserve program.

Section 2. Section 77-6-109, MCA, is amended to read:

**"77-6-109. Duration of lease.** *Except as provided in [section 1], a* lease *for* agricultural or grazing lands may *not* be for a period other than 5 or 10 years. Leases for city lots, town lots, and lands valuable for commercial development may not exceed 40 years."

Section 3. Section 77-6-110, MCA, is amended to read:

**"77-6-110. Lease expiration dates.** *Except as provided in [section 1], all* leases for agricultural lands, grazing lands issued after February 27, 1939, no matter on what date issued, shall expire on February 28 within 10 years from the date on which the lease becomes effective."

Section 4. Section 77-6-204, MCA, is amended to read:

**"77-6-204. Notification of termination of lease.** When a lease expires, is canceled, *or is voluntarily terminated under [section 1],* the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during or immediately preceding the term of the expired, canceled, *or terminated* lease."

Section 5. Section 77-6-205, MCA, is amended to read:

**"77-6-205. Renewal leases.** (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due from him to the state *or who has voluntarily terminated a lease under [section 1]* is entitled to have his lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration *or within 30 days following voluntary termination* if no other applications for lease of the land have been received 30 days prior to the expiration of his lease *or within 30 days following voluntary termination.* The renewal shall be at the rental rate provided by law for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. Except as provided in 77-6-212, if other applications have been received,

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the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. *The* request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands and $1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by the lessee that occurred during the previous lease term but no more than 3 years prior to the date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted but not completed before renewal are applicable to the renewal lease.

*(4) A renewal lease may be voluntarily terminated pursuant to [section 1]."*

Section 6. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 77, chapter 6, and the provisions of Title 77, chapter 6, apply to [section 1].

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1989.

# CHAPTER NO. 556

[SB 388]

AN ACT TO CREATE A MONTANA CONSERVATION CORPS WITHIN THE PARKS DIVISION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] authorizes the department of fish, wildlife, and parks to adopt rules relating to the Montana conservation corps.

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It is the intent of the legislature that the rules address the following:

(1) procedures for recruitment and employment of corpsmembers;

(2) procedures for review and approval of work experience projects;

(3) a corpsmember code of conduct and grievance procedure;

(4) standards and procedures to evaluate and report on the performance of corpsmembers and the corps program;

(5) training procedures and programs for corpsmembers; and

(6) other rules necessary to accomplish the purposes of the Montana conservation corps program.

WHEREAS, Article IX, section 1, of the Montana Constitution states that the Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources; and

WHEREAS, to maintain, protect, and conserve the valuable and nonrenewable resources of the state parks, programs need to be implemented that will assure preservation of state parks, economic productivity, and scenic beauty, as well as public health and safety and social benefit, as they continue to be subject to public use; and

WHEREAS, conservation work programs have proven highly successful and cost-effective in assisting in the protection, conservation, rehabilitation, and improvement of scenic, historical, archaeological, scientific, and recreational resources.

THEREFORE, the Legislature finds that:

(1) it is appropriate to provide a work experience program for unemployed or economically disadvantaged youth, adults, and volunteers who would work without pay that will enable them to serve society, learn practical skills, and establish sound work records that will in turn provide opportunities for future employment and education; and

(2) benefits will accrue to the maintenance and economic productivity of the state park system, to the state economy, and to the participants who benefit from exposure to a fundamental work ethic through their experience in safeguarding and improving state resources as a result of corps employment opportunities.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Montana conservation corps — purpose and intent.** (1) There is a Montana conservation corps within the parks division of the department of fish, wildlife, and parks.

(2) The purpose of the corps is to accomplish labor-intensive improvements to the state park system and to other public lands for which specific responsibilities are accepted through service contracts.

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(3) It is the intent of the legislature that the corps grow in productive ways and that state agencies involved with the corps provide coordination of the conservation corps program. The legislature also intends that the Montana conservation corps program contract with the job service or the human resource development council, as defined in 53-10-501.

Section 2. **Definitions.** As used in [this act], unless the context clearly requires otherwise, the following definitions apply:

(1) "Corps" means the Montana conservation corps.

(2) "Corps coordinator" means the person who acts as the corps administrative officer and employs the staff necessary to implement the provisions of this chapter.

(3) "Corpsmember" means a participant in the corps.

(4) "Crewleader" means a participant in the corps who supervises corpsmembers.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Division" means the parks division of the department of fish, wildlife, and parks.

(7) "State agencies" means the departments of fish, wildlife, and parks; social and rehabilitation services; labor and industry; state lands; family services; and natural resources and conservation.

Section 3. **Powers and duties of the division.** The division, in cooperation with the department, may:

(1) hire a corps coordinator;

(2) coordinate with state agencies to place eligible participants in work experience projects, including those state general assistance (GA) and federal aid to families with dependent children (AFDC) recipients utilizing grant diversion funding and youth under state supervision utilizing payments from the department of family services;

(3) develop and approve work experience projects that meet the requirements of [this act];

(4) ensure that work experience projects involve labor-intensive improvements to public lands or facilities that will result in a public value and have a potential to yield revenue;

(5) execute contracts or cooperative agreements containing the terms and conditions necessary and desirable for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

(6) execute contracts or cooperative agreements with federal, state, or local agencies, persons, partnerships, associations, or corporations for the purpose of administering the requirements of [this act];

(7) develop procedures for awarding incentive vouchers;

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(8) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to corpsmembers prior to participation in an emergency project;

(9) apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including the acceptance of federal funds appropriated by the legislature;

(10) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience projects; and

(11) adopt rules and guidelines necessary to implement the provisions of [this act] and to effectively administer the program.

Section 4. **Work experience projects — criteria — standards — land use exceptions.** (1) The division shall ensure that each work experience project established pursuant to the authority granted in [section 3] provides corpsmembers with job training skills, which may include job search and application skills, and with work experience related to the conservation, improvement, or development of natural resources or the enhancement, preservation, or maintenance of public lands, waters, or facilities. Job training may be provided by the work experience project or by other agencies as provided in [section 3].

(2) Work experience projects must be selected according to criteria that include but are not limited to:

(a) the extent to which the project will provide environmental, natural resource, and state park system benefits;

(b) the extent to which the project will provide opportunities for public use and value of the land or facility and on-the-job training for corpsmembers; and

(c) the extent to which the project will generate additional revenue for the state or its subdivisions.

(3) Work sites of work experience projects must conform to applicable health and safety standards required for safe work environments.

(4) Work experience projects developed or approved and funded by the division must be limited to public lands and facilities except where improvements to other lands will provide documented public value or benefit. Reimbursement must be provided to the division for that portion of the total cost of work on nonpublic lands. The reimbursement must be retained by the division for use in the corps program or for incentive vouchers. In the case of emergencies and natural disasters, projects may take place on land or at facilities not owned by the department or by another state or local agency without regard to public benefit and private reimbursement.

Section 5. **Eligibility for employment in program — referrals.** (1) To be eligible to participate in the Montana conservation corps program, a person must:

(a) be a citizen of the state as defined in 1-1-402;

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(b) be 18 years of age or older to qualify for the adult corps and at least 16 years of age and under 22 years of age to qualify for the summer youth corps;

(c) be capable of performing labor-intensive work; and

(d) meet the requirement of the job service and the human resource development council, as defined in 53-10-501, for participation in job training programs, be assigned by the department of family services as a youth under state supervision, be unemployed, or be accepted as an unpaid volunteer.

(2) Eligibility for corpsmembers must be determined by local job service offices and summer youth program operators. If the number of corps positions is insufficient to place all eligible individuals who apply for participation in the program, the job service may, upon approval by the applicant, provide the name of an eligible individual to private sector employers or to job training programs requesting referrals.

Section 6. **Term of enrollment — compensation — exemption from employee benefits.** (1) A corpsmember will be placed for a period not to exceed 12 months. The program operator shall refer the names of corpsmembers who successfully complete their participation in the corps to the job service for assistance in securing private sector employment or for enrollment in additional job training programs. The program operator may also, upon approval of the corpsmember, provide the name of a corpsmember who successfully completes his participation in the corps to private sector employers requesting referrals.

(2) A corpsmember may not be scheduled to work for more than 40 hours per week. Job training and placement services must be provided to corpsmembers during regular work hours. Corpsmembers must be compensated as provided in subsection (3) for participation in job training and placement service programs.

(3) A corpsmember must be compensated at a rate set by the department that is not less than the federal minimum wage.

(4) A corpsmember is not entitled to any employee benefits provided to permanent department or agency employees except for holiday pay and workers' compensation benefits that are provided through the funds appropriated to carry out [this act]. Service as a corpsmember does not qualify an individual for unemployment compensation benefits.

(5) If funds are available, a person who is employed as a corpsmember for the full period of enrollment and who receives a satisfactory employment evaluation may be awarded an incentive voucher valid for up to 3 years at any Montana institution of higher education or vocational-technical center.

Section 7. **Prohibited activities.** (1) The division, in developing and approving work experience projects, shall ensure that:

(a) work available to participants is not available as the result of a labor dispute, strike, or lockout and will not be assigned to cause a layoff or downgrading or to prevent the return to work of an available competent employee; and

(b) a work experience project:

(i) does not impair existing contracts for service or collective bargaining agreements; and

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(ii) is not inconsistent with the terms of a collective bargaining agreement without written concurrence of the labor organization and employer concerned.

(2) It is unlawful for a person to demand from any public officer, corpsmember, or crewleader an assessment or percentage of any money or profit, or its equivalent in support, service, or any other thing of value, with the express or implied understanding that it will be used for political purposes. Nothing contained in [this act] may be construed to prohibit voluntary contributions to any political committee or organization for legitimate political purposes to the extent allowed by law.

Section 8. **Coordination requirements — consolidation of programs authorized.** (1) The governor shall assure that program activities under [this act] are coordinated with programs administered under the federal Job Training Partnership Act and any other relevant employment, training, education, or work program in this state.

(2) The governor may consolidate the program established in [section 1] with other programs in order to maximize coordination of program activities as required in subsection (1) and to prevent overlapping and duplication of services.

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective date.** [This act] is effective July 1, 1989.

Approved April 15, 1989.

# CHAPTER NO. 557

[SB 406]

AN ACT TO EXPAND THE SCOPE AND NUMBER OF ALLOWABLE SIMULCAST HORSERACES AND SIMULCAST RACE MEETS UNDER THE PARIMUTUEL SYSTEM OF WAGERING; DELEGATING AUTHORITY TO THE BOARD OF HORSERACING TO LICENSE, APPROVE, AND REGULATE SIMULCAST HORSERACES AND RACE MEETS BROADCAST BOTH INTRASTATE AND INTERSTATE UNDER THE PARIMUTUEL SYSTEM AND TO APPROVE AND REGULATE FACILITIES FOR THE CONDUCT OF SIMULCAST RACES AT TRACKS AND AT SIMULCAST FACILITIES WITHIN THE STATE; IMPOSING ON SIMULCAST RACES THE SAME REQUIREMENTS FOR SET-ASIDES, LIABILITY INSURANCE, AND DISTRIBUTION OF DEPOSITS AS THOSE FOR LIVE RACES; AMENDING SECTIONS 23-4-101, 23-4-104, 23-4-105, 23-4-201 THROUGH 23-4-205, 23-4-301, 23-4-302, AND 23-4-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates new rulemaking and licensing authority to the board of horseracing.

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This bill will expand existing simulcast wagering and allow for regulated parimutuel wagering on simulcast races at satellite facilities year around. For this purpose, the bill delegates authority to the board to adopt rules governing the time, conduct, and supervision of simulcast races and parimutuel betting with respect to simulcast races, as well as rules for licensing, approval, and regulation of simulcast facilities.

This bill authorizes the board to license simulcast facilities.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-4-101, MCA, is amended to read:

**"23-4-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of horseracing provided for in 2-15-1881.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of an official or licensee regulated by this chapter and all other persons who have a permanent or continuous residence in the household of the official or licensee.

(4) "Minor" means a person under 18 years of age.

(5) "Persons" means individuals, firms, corporations, fair boards, and associations.

(6) "Race meet" means racing of registered horses where the parimutuel system of wagering is used. *The term includes simulcast races.*

*(7) "Simulcast" means a live broadcast of an actual horserace at the time it is run. The term includes races of local or national prominence.*

*(8) "Simulcast facility" means a facility at which horseraces are simulcast and wagering on the outcome is permitted under the parimutuel system.*

*(9)* "Steward" means an official hired by the department and by persons sponsoring a race meet to regulate and control the day-to-day conduct and operation of a sanctioned meet.

*(10)* "Board of stewards" means a board composed of three stewards who supervise racing meets."

Section 2. Section 23-4-104, MCA, is amended to read:

**"23-4-104. Duties of board.** The board shall adopt rules to govern horserace meets and the parimutuel system. These rules shall include the following:

(1) definitions;

(2) auditing;

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(3) supervision of the parimutuel system;

(4) corrupt practices;

(5) supervision, duties, and responsibilities of the executive secretary, presiding steward, racing secretary, and other racing officials;

(6) licensing of all personnel who have anything to do with the substantive operation of racing;

(7) the establishment of dates for race meets and meetings in the best interests of breeding and racing in this state;

(8) the veterinary practices and standards which must be observed in connection with race meets;

(9) absolute responsibility of trainers for the condition of horses, regardless of the acts of third parties;

(10) licensing or renewal of a license of a person whose license has been suspended by the board or another horseracing jurisdiction;

(11) setting license fees commensurate with the cost of issuing a license;

*(12) the time, conduct, and supervision of simulcast races and parimutuel betting on simulcast races; and*

*(13) licensing, approval, and regulation of simulcast facilities.*"

Section 3. Section 23-4-105, MCA, is amended to read:

"**23-4-105. Authority of board.** The board shall, subject to 37-1-101 and 37-1-121, license and regulate horseracing and review race meets held in this state under this chapter. If the board decides to authorize new forms of racing, *including new forms of simulcast racing,* not currently engaged in in Montana, it shall do so after holding public hearings to determine the effects of these forms of racing on the existing saddle racing program in Montana. The board should consider both economic and safety impacts on the existing racing and breeding industry."

Section 4. Section 23-4-201, MCA, is amended to read:

"**23-4-201. Licenses.** (1) It is unlawful for a person to hold a race meet, *including simulcast race meets under the parimutuel system,* in this state without a valid license issued by the department under this chapter. A person applying for a license to hold a race meet under this chapter shall file an application with the department which shall set forth the time, place, and number of days the license will continue and other information the board requires.

(2) A person who participates in a race meet shall be licensed and charged an annual fee set by the board, which shall be paid to the department and used for expenses of administering this chapter, subject to 37-1-101(6). Each person holding a license under this chapter shall comply with this chapter and with the rules adopted and orders issued by the board.

(3) *A* license may *not* be issued to a person who has failed to pay the fees, taxes, or *money* required under this chapter.

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(4) Applications to hold race meets shall be submitted to the department, and the board shall act on the applications within 30 days. The board is the sole judge of whether the race meet may be licensed and the number of days the meet may continue.

(5) The board shall require that a fair board and an independent racing association conducting race meets meet the requirements of the rules adopted by the board before granting a license.

*(6) A racing association consisting of a local fair board or an association approved by a local fair board may apply for a license to hold a simulcast race meet in a simulcast facility.*

*(7)* An unexpired license held by a person who violates this chapter or who fails to pay to the department the sums required under this chapter is subject to cancellation and revocation by the board."

Section 5. Section 23-4-202, MCA, is amended to read:

**"23-4-202. Penalty for violations of law — authority of board — judicial review.** (1) A person holding a race meet *or* an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person violating this chapter is guilty of a misdemeanor.

(2) The board or, upon the board's authorization, the board of stewards of a race meet at which they officiate may exclude from racecourses in this state a person whom the board considers detrimental to the best interest of racing as defined by rules of the board.

(3) As its own formal act or through an act of a board of stewards of a race meet, the board may suspend or revoke any license issued by the department to a licensee and assess a fine, not to exceed $1,000, against a licensee who violates any of the provisions of this chapter or any rule or order of the board. In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period.

(4) The board shall promulgate rules implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed herein. The rules may include provisions for the following:

(a) summary imposition of penalty by the stewards of a race meet, including a fine and license suspension, subject to review under the contested case provisions of the Montana Administrative Procedure Act;

(b) stay of summary imposition of penalty by either the board or board of stewards;

(c) retention of purses pending final disposition of complaints, protests, or appeals of stewards' rulings;

(d) setting aside of up to 2% of exotic wagering on races, *including simulcast races,* to be used as a bonus for owners pursuant to 23-4-304(2), and up to 30% of the amount set aside may be used to defray administrative costs which shall be in addition to the 20% already withheld under 23-4-302;

*(e) using 2% of exotic wagering on live racing to be immediately and equally distributed to all purses except stakes races;*

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*(f)* assessment of penalty and interest on the late payment of fines, which must be paid before licenses are reinstated;

*(g)* definition of exotic forms of wagering on races to be allowed;

*(h) standards for simulcast facilities; and*

*(i) conduct and supervision of simulcast races and parimutuel betting or wagering on simulcast races.*

(5) The district court of the first judicial district of the state has exclusive jurisdiction for judicial review of cases arising under this chapter."

Section 6. Section 23-4-203, MCA, is amended to read:

**"23-4-203. Race meets — when lawful.** It is lawful to conduct *live or simulcast* race meets at a racetrack or *simulcast facility or* otherwise at any time during the week."

Section 7. Section 23-4-204, MCA, is amended to read:

**"23-4-204. Race exclusively for Montana-bred horses — bonus for winner.** (1) For the purpose of encouraging the breeding in this state of valuable registered horses, at least one race each day at each race meet shall be limited to horses bred in this state unless, in the board's judgment, there is an insufficient number of Montana-bred horses for such a race. If in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead.

(2) A sum equal to 10% of the first money of every purse won by a horse bred in this state shall be paid by the licensee conducting the race meet to the breeder of the horse. Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.

*(3) Two percent of exotic wagering on a simulcast race shall be placed in a fund to be distributed by the board, in addition to existing Montana breeders' awards, on a percentage basis of actual breeders' awards earned.*

*(4) Up to 10% of the amount set aside for Montana breeders' awards may be used to defray administrative costs in addition to the 20% withheld under 23-4-302."*

Section 8. Section 23-4-205, MCA, is amended to read:

**"23-4-205. Public liability insurance.** For the protection of the public, exhibitors, and visitors, a person licensed to conduct a race meet *or operate a simulcast facility* under this chapter shall carry public liability insurance in an amount and form of contract approved by the board."

Section 9. Section 23-4-301, MCA, is amended to read:

**"23-4-301. Parimutuel betting — other betting illegal.** (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under this chapter.

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(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may, on the day a race meet is conducted, also provide a place in the race meet grounds or *simulcast facility* where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races *approved by the board. The board shall approve only intrastate races and races of national prominence to the Montana racing season. However, the board has authority to approve races from other states during the off-season.*

(4) It is unlawful to conduct pool selling *or* bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

*(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.*

*(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing, all moneys to be distributed on a percent, based on each track's percent, of total annual on-track parimutuel handle."*

Section 10. Section 23-4-302, MCA, is amended to read:

**"23-4-302. Distribution of deposits — breakage.** *(1)* Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which, in the case of exotic wagering on races, shall not exceed *24%*, and in all other races, shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".

*(2) Each licensee conducting the parimutuel system for a simulcast race meet shall distribute all sums deposited with the licensee in any pool for such simulcast race meet, less an amount which, in the case of exotic wagering on such races, shall not exceed 24%, and in all other such races, shall not exceed 20% of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of 10, known as "breakage".*

*(3) Each licensee conducting a parimutuel system for a simulcast race meet shall deduct 1% of its total parimutuel handle of the simulcast facility and give it to the local fair board. The money must be used to operate or enhance the county fairgrounds facility."*

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Section 11. Section 23-4-304, MCA, is amended to read:

**"23-4-304. Gross receipts — department's percentage — collection and allocation.** (1) *(a)* The licensee shall pay to the department 1% of the gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the department within 5 days after receipt by the licensee. At the end of each race meet the licensee shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance shall be paid to the department. Money paid to the department may be used for the expenses incurred in carrying out this chapter. The licensee shall, at the same time, pay to the department all sums collected under 23-4-202(4)(d) on exotic wagering on races.

*(b) Each licensed simulcast facility shall pay to the department either 1% of the gross receipts of each day's parimutuel betting at each race meet or the actual cost to the board of regulating the simulcast race meet, whichever is higher. The money must be paid to the department within 5 days after receipt of the money by the licensee. At the end of each race meet the licensed simulcast facility shall prepare a report to the department showing the amount of the overpayments and underpayments. If the report shows the underpayments to be in excess of the overpayments, the balance must be paid to the department. Money paid to the department must be deposited in an account in the state special revenue fund and must be used for the administration of this chapter. The licensed simulcast facility shall, at the same time, pay to the department all sums collected under 23-4-202(4)(d) on exotic wagering on races.*

(2) At the end of the racing season, sums collected under 23-4-202(4)(d) must be distributed by the department, after first passing through the board's agency fund account, to the licensed owners of those Montana-bred horses finishing in the money at the meet from which the sums derived. The owner's award must be calculated as follows:

(a) divide the total amount collected under 23-4-202(4)(d) by the total amount won by Montana-bred horses;

(b) multiply the quotient derived under subsection (2)(a) by the total amount of money won by each owner's Montana-bred horses.

(3) For purposes of the owner's award under subsection (2), "owner" means the individual, partnership, corporation, person, or other entity that owns the horse at the time of entry.

(4) Licensees may not consider the sums available under 23-4-202(4)(d) when establishing purses."

Section 12. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 13. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1989.

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# CHAPTER NO. 558

[HB 234]

AN ACT INCREASING MEMBER AND EMPLOYER CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; REVISING THE FORMULA FOR CALCULATING SERVICE AND NONDUTY-RELATED DISABILITY RETIREMENT ALLOWANCES UNDER THE RETIREMENT SYSTEM; AMENDING SECTIONS 19-3-701, 19-3-801, 19-3-904, AND 19-3-1008, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-3-701, MCA, is amended to read:

**"19-3-701. Member's contribution to be deducted.** (1) *On and before June 30, 1989, the* normal contribution of each member is 6% of his compensation. *The normal contribution of each member increases to:*

*(a) 6.15% of his compensation on July 1, 1989;*

*(b) 6.30% of his compensation on July 1, 1990;*

*(c) 6.417% of his compensation on July 1, 1991;*

*(d) 6.55% of his compensation on July 1, 1992; and*

*(e) 6.70% of his compensation on July 1, 1993.*

*(2)* Payment of salaries or wages less the contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

*(3)* Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

*(4)* The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

*(5)* The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and his compensation as defined in 19-3-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

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Section 2. Section 19-3-801, MCA, is amended to read:

**"19-3-801. Employer contribution rates — actuarial determination.** (1) Each employer shall contribute to the cost of benefits under the system. The amount of the employer contributions shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates *is* 6.417% from July 1, 1983, *to June 30, 1992. The sum of the rates increases to 6.55% on July 1, 1992, and to 6.70% on July 1, 1993.*

(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.

(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons."

Section 3. Section 19-3-904, MCA, is amended to read:

**"19-3-904. Amount of retirement allowance.** (1) The annual amount of retirement allowance payable to a member following his service retirement is the sum of (a), (b), and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) *one fifty-sixth* of his final compensation multiplied by the number of years of his creditable service;

(c) any retirement allowance payable under 19-3-905.

(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member."

Section 4. Section 19-3-1008, MCA, is amended to read:

**"19-3-1008. Allowance for nonduty-related disability.** (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (a), (b), and (c) as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

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(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is the greater of (i) or (ii) as follows:

(i) a pension which, together with the annuity provided under subsection (b), shall make the retirement allowance equal to 90% of *one fifty-sixth* of his final compensation multiplied by his years of creditable service;

(ii) a retirement allowance equal to 25% of his final compensation.

(2) Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Section 7. **Applicability.** [This act] applies to members retiring on or after [the effective date of this act].

Approved April 15, 1989.

# CHAPTER NO. 559

[HB 564]

AN ACT EXTENDING THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY TO QUALIFYING PERSONS WHO RENT FROM HOUSING AUTHORITIES; AMENDING SECTIONS 15-30-171 AND 15-30-177, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-171, MCA, is amended to read:

**"15-30-171. Residential property tax credit for elderly — definitions.** As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

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(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments under federal social security.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(4) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(5) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(6) "Household income" means $0 or the amount obtained by subtracting $4,000 from gross household income, whichever is greater.

(7) "Homestead" means:

*(a)* a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; *or*

*(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.*

(8) "Department" means the department of revenue.

(9) "Gross rent" means the total rent in cash or its equivalent actually paid during the 'aim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

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Section 2. Section 15-30-177, MCA, is amended to read:

**"15-30-177. Residential property tax credit for elderly — limitations.** (1) Only one claimant per household in a claim period under the provisions of 15-30-171 through 15-30-179 is entitled to relief.

(2) *Except as provided in subsection (3), no* claim for relief may be allowed for any portion of property taxes paid or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) *Except for dwellings rented from a county or municipal housing authority, no* claim for relief may be allowed on rented lands or rented dwellings that are not subject to ad valorem taxation in Montana during the claim period."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective January 1, 1990.

Approved April 15, 1989.

# CHAPTER NO. 560

[SB 77]

AN ACT TO RAISE THE COUNTY ROAD MILL LEVY IN FOURTH, FIFTH, SIXTH, AND SEVENTH CLASS COUNTIES FROM 18 MILLS TO 23 MILLS AND IN ALL OTHER COUNTIES FROM 15 MILLS TO 20 MILLS; AMENDING SECTION 7-14-2501, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-14-2501, MCA, is amended to read:

**"7-14-2501. General road tax authorized.** (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than *20* mills, except in fourth, fifth, sixth, and seventh class counties, which may levy not more than *23* mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders, as the board may direct.

(2) This section shall not apply to incorporated cities and towns which by ordinance provide for the levy of a like tax for road, street, or alley purposes.

(3) All money collected under this section shall belong to the county road fund."

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved April 15, 1989.

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# CHAPTER NO. 561

[SB 107]

AN ACT CLARIFYING THE LAWS RELATING TO EXECUTIVE CLEMENCY; AMENDING SECTIONS 46-23-301 THROUGH 46-23-303, 46-23-307, 46-23-315, AND 46-23-316, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-23-301, MCA, is amended to read:

**"46-23-301. Cases of executive clemency — application for clemency — definitions.** *(1) (a) "Clemency" means kindness, mercy, or leniency that may be exercised by the governor towards a convicted person. The governor may grant clemency in the form of:*

*(i) the remission of fines or forfeitures;*

*(ii) the commutation of a sentence to one which is less severe;*

*(iii) respite; or*

*(iv) pardon.*

*(b) "Pardon" means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.*

*(2) A person convicted of a crime need not exhaust judicial or administrative remedies before he files an application for clemency.* The board shall *consider cases of executive clemency only upon application.* All applications for executive clemency *must* be made to the board. *Applications may be filed only by the person convicted of the crime, by his attorney acting on his behalf and with his consent, or by a court-appointed next friend, guardian, or conservator acting on his behalf. The board* shall cause an investigation to be made *of and base any recommendation it makes on:*

*(a)* all the circumstances surrounding the crime for which the applicant was convicted*;* and

*(b)* the individual circumstances relating to social conditions of the applicant *prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.*

*(3) The board* shall advise the governor and recommend action to be taken. *The board may recommend that clemency be granted or denied. In noncapital cases, if the board recommends that clemency be denied, the application must not be forwarded to the governor and the governor may not take action on the case. In capital cases, the board shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the board, but he shall review the record of the hearing and the board's recommendation before he grants or denies clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to him."*

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Section 2. Section 46-23-302, MCA, is amended to read:

**"46-23-302. Order for hearing on application for executive clemency.** After the board has duly considered an application for executive clemency and has by majority vote favored a *hearing*, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for executive clemency concerning ...., a convict confined in the state prison (or to one ...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of .... committed at ...., in the county of ...., State of Montana, on the .... day of ...., 19.., and sentenced for a term of .... years.

Therefore, be it ordered that ...., the .... day of ...., 19.., be set apart for the consideration of said executive clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, *or* remission or suspension of fine or forfeiture are hereby notified to be present at .... o'clock of said day, at .....

Further, ordered that a copy of this order be printed and published in the .... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at ...., in the county of ...., once each week for 2 weeks beginning ...., 19.., and ending ....."

Section 3. Section 46-23-303, MCA, is amended to read:

**"46-23-303. Publication of order.** The board must cause a copy of such order to be published in the newspaper therein designated at least once a week for 2 weeks prior to the hearing and, at the same time, cause to be deposited in the post office at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the *applicant*."

Section 4. Section 46-23-307, MCA, is amended to read:

**"46-23-307. Decision of board.** Within 30 days after the hearing of any *capital* case *or in noncapital cases where the decision is made to recommend clemency be granted*, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor."

Section 5. Section 46-23-315, MCA, is amended to read:

**"46-23-315. Authority of governor to grant respite — application.** The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for such time as he thinks proper. *The governor may grant a respite upon application of a person authorized to apply for executive clemency and prior to any review or recommendation by the board of pardons. A respite must be of temporary duration for a definite period of time. Any respite that is granted that stays the execution of a death warrant has the effect of*

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*postponing the execution of the warrant. In such a case, if clemency is not granted, the death warrant is again in effect at the expiration of the period of respite and the execution must take place on the date of expiration of the respite."*

Section 6. Section 46-23-316, MCA, is amended to read:

**"46-23-316. Governor's report to legislature.** The governor must communicate to the legislature at each regular session each case of remission of fine or forfeiture, *respite*, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or *respite*, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto."

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1989.

# CHAPTER NO. 562

[SB 257]

AN ACT TO ALLOW A CREDIT ON GASOLINE OR SPECIAL FUELS TAXES PAID BY A GASOLINE DISTRIBUTOR OR SPECIAL FUEL DEALER ON UNPAID ACCOUNTS; AND AMENDING SECTIONS 15-70-221, 15-70-225, AND 15-70-328, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-221, MCA, is amended to read:

**"15-70-221. Refund or credit authorized.** (1) Any person who shall purchase and use any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol or operating or propelling stationary gasoline engines, tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Such refund or drawback should in no instance exceed the tax paid or to be paid to the state and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the department of commerce by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

*(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline for which the distributor has received*

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*no consideration from or on behalf of the purchaser. The distributor shall have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal income tax purposes.*

*(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due on the collected amount must be paid to the department.*

*(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more."*

Section 2. Section 15-70-225, MCA, is amended to read:

**"15-70-225. Application for refund or credit — filing — correction by department.** (1) The application for refund shall be a signed statement, on a form furnished by the department of revenue. *Except for a claim for a credit of taxes paid on unpaid accounts, the form must be* accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. *A claim for a credit for taxes paid on accounts for which the distributor received no compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any* further information pertaining to *a* claim shall be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(3) All applications for refunds shall be filed with the department within 14 months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid *or for a credit for taxes paid by him on unpaid accounts* within 3 years after the date of payment.

(4) Should the department find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Section 3. Section 15-70-328, MCA, is amended to read:

**"15-70-328. Credits.** (1) Any licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased shall receive credit in the amount of any tax paid on special fuel exported for use outside of this state or for any use off the public roads and highways of this state or for any overpayment of special fuel taxes not due to the state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

(2) Any licensed special fuel user who purchases a temporary special fuel permit and thereafter applies for a special fuel vehicle permit for the

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same vehicle in less than 11 days after the temporary permit is issued shall receive credit in the amount of the temporary permit fee.

*(3) (a) A special fuel dealer who has paid a special fuel tax is entitled to a credit of the tax paid to the department on those sales of special fuels for which the dealer has received no consideration from or on behalf of the purchaser. The dealer shall have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal income tax purposes.*

*(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due on the collected amount must be paid to the department.*

*(c) The department may require a dealer to submit periodic reports listing accounts that are delinquent for 90 days or more."*

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 15, 1989.

# CHAPTER NO. 563

[SB 100]

AN ACT TO DENY GENERAL RELIEF ASSISTANCE FOR 3 MONTHS TO A PERSON WHO VOLUNTARILY LEAVES EMPLOYMENT WITHOUT GOOD CAUSE OR WHO IS DISCHARGED FROM EMPLOYMENT DUE TO MISCONDUCT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Ineligibility due to voluntary termination of employment.** (1) A person is not eligible to receive general relief assistance for a period of 3 months if he has voluntarily left employment without good cause connected to such employment.

(2) For purposes of subsection (1), a person has voluntarily left employment with good cause if he has left work because of:

(a) a compelling reason directly related to the job under circumstances that would cause a reasonably prudent person to leave his employment;

(b) work conditions that pose an undue risk of personal injury, illness, or harm;

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(c) unlawful discrimination, harassment, or other mistreatment by the employer; or

(d) personal illness or injury and, after recovering from such illness or injury, he returns to his employer and finds no suitable work available.

Section 2. **Ineligibility because of discharge due to misconduct.** (1) A person is ineligible to receive general relief assistance for a period of 3 months if he has been discharged or suspended from employment for misconduct related to the individual's work or affecting his employment.

(2) For purposes of subsection (1), "misconduct" means:

(a) intentional, willful, or wanton disregard of the employer's interest or of the employee's duties and obligations to his employer;

(b) material breach of the employee's duty to his employer as found in:

(i) the employee's deliberate violation or disregard of standards of behavior that the employer has a right to expect of his employee; or

(ii) carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional or substantial disregard of the employer's interest;

(c) dishonesty toward the employer, including acts such as deliberate falsification of company records, theft, deliberate deception, lying, and other statements or acts that demonstrate a willful or wanton disregard of the employer's interest;

(d) excessive, unexcused absences from work or repeated, unexcused tardiness by the employee;

(e) insubordination; or

(f) assault, threats of violence, provoking a fight, or stealing from a fellow employee if committed on the premises of the employer.

(3) The following do not constitute misconduct within the meaning of subsection (1):

(a) mere inefficiency or unsatisfactory conduct of the employee;

(b) inadvertence or ordinary negligence in isolated instances; or

(c) good faith errors in judgment or discretion.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 3, part 2, and the provisions of Title 53, chapter 3, part 2, apply to [sections 1 and 2].

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Section 5. **Effective date — applicability.** [This act] is effective on passage and approval and applies to eligibility determinations made beginning July 1, 1989.

Approved April 18, 1989.

# CHAPTER NO. 564

[SB 139]

AN ACT CHANGING FROM 18 MONTHS TO 24 MONTHS THE MAXIMUM TIME FOR REDEMPTION OF A PROPERTY TAX LIEN ACQUIRED AT A TAX SALE OR OTHERWISE WITH RESPECT TO PROPERTY SUBDIVIDED AS A RESIDENTIAL OR COMMERCIAL LOT UPON WHICH TAXES OR SPECIAL ASSESSMENTS ARE DELINQUENT AND UPON WHICH NO HABITABLE DWELLING OR COMMERCIAL STRUCTURE IS SITUATED; AND AMENDING SECTION 15-18-111, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-18-111, MCA, is amended to read:

**"15-18-111. Time for redemption — interested party.** (1) Except as provided in subsection (2), redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(2) For property subdivided as a residential or commercial lot upon which taxes or special assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within *24* months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(3) For the purposes of this chapter, an "interested party" includes a mortgagee, vendor of a contract for deed or his successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person having an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of this chapter."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 18, 1989.

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# CHAPTER NO. 565

[SB 153]

AN ACT TO CLARIFY THAT AN OUTFITTER LICENSED UNDER TITLE 37, CHAPTER 47, MAY RETAIN THE SERVICES OF A PROFESSIONAL GUIDE ACTING AS AN INDEPENDENT CONTRACTOR IN THE HUNTING OR TAKING OF GAME BIRDS OR FISH; AND AMENDING SECTIONS 37-47-101, 37-47-301, 37-47-304, 37-47-309, AND 37-47-341, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-47-101, MCA, is amended to read:

**"37-47-101. (Temporary) Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of outfitters provided for in 2-15-1883.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License year" means that period commencing January 1 and ending December 31 of the same year.

(4) "Nonresident" means a person other than a resident.

(5) "Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(6) "Professional guide" *and "guide" mean* a person:

*(a)* who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; *or*

*(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds or fish. A*

*guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use.*

(7) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(8) "Participant" means a person using the services offered by a licensed outfitter or professional guide.

**37-47-101. (Effective July 1, 1991) Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "License year" means that period commencing January 1 and ending December 31 of the same year.

(2) "Nonresident" means a person other than a resident.

(3) "Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(4) "Outfitters' council" means the Montana outfitters' council provided for in 2-15-1883.

(5) "Professional guide" *and "guide" mean* a person:

*(a)* who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; *or*

*(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment in assisting a person to hunt or take game animals or fish.*

(6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(7) "Participant" means a person using the services offered by a license outfitter or professional guide."

Section 2. Section 37-47-301, MCA, is amended to read:

**"37-47-301. License required — services performed — standards.** (1) No person may act as an outfitter or professional guide or

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advertise as an outfitter without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by any person, the outfitter shall keep and submit records as required by the department.

(3) Outfitters, *professional guides*, and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as *outfitters or professional guides*.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) An outfitter may not willfully and substantially misrepresent his facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients."

Section 3. Section 37-47-304, MCA, is amended to read:

**"37-47-304. Application.** (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the board which shall include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of his principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed *or retained as an independent contractor* that the professional guide is in fact to be employed *or retained as an independent contractor* by such outfitter and stating that the outfitter recommends the applicant for his qualifications;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;

(g) a statement of the maximum number of guests to be taken at any one time;

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(h) the written approval of the appropriate agency or landowner on whose lands he will establish hunting camps.

(2) Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of this part; any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

(3) Application shall be made to and filed with the board.

(4) Only one application for an outfitter's or professional guide's license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 4. Section 37-47-309, MCA, is amended to read:

**"37-47-309. Professional guide's license.** (1) For the purposes of this part, a person may serve as a professional guide under *an outfitter's* license, after submitting his application with the proper license fee, until the license is issued or denied.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of the endorsing outfitter and is valid only while the holder of such license is employed *or retained as an independent contractor* by the endorsing outfitter."

Section 5. Section 37-47-341, MCA, is amended to read:

**"37-47-341. Grounds for suspension or revocation of license.** Every license or right to apply for and hold such license may be suspended or revoked upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(5) two convictions or bond forfeitures of $100 or more as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States within the past 5 years;

(6) a substantial breach of any contract with any person utilizing the services of the license holder provided that such breach is established as a matter of final judgment in a court of law;

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(7) the willful employment of *or contracting with* an unlicensed professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or professional guide that causes an accident or injury to person or property of any client of such outfitter or professional guide."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 18, 1989.

# CHAPTER NO. 566

[SB 201]

AN ACT TO EXTEND UNTIL THE BOARD OF OIL AND GAS CONSERVATION ADOPTS A PROGRAMMATIC ENVIRONMENTAL STATEMENT, BUT NO LATER THAN DECEMBER 31, 1989, THE EXEMPTION OF THE BOARD OF OIL AND GAS CONSERVATION FROM THE REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT WHEN ISSUING DRILLING PERMITS; EXTENDING UNTIL DECEMBER 31, 1989, THE DATE BY WHICH THE BOARD MUST ADOPT A PROGRAMMATIC ENVIRONMENTAL STATEMENT; AND AMENDING SECTION 75-1-201, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-1-201, MCA, is amended to read:

**"75-1-201. General directions — environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state shall be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in subsection (2), shall:

(i) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(ii) identify and develop methods and procedures which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

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(iii) include in every recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, where consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate state, federal, and local agencies which are authorized to develop and enforce environmental standards shall be made available to the governor, the environmental quality council, and the public and shall accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than *December 31*, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).

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(b) The board of oil and gas conservation shall adopt a programmatic statement by *December 31*, 1989, that must include but not be limited to:

(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;

(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;

(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;

(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;

(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and

(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.

(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.

*(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council."*

Approved April 18, 1989.

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# CHAPTER NO. 567

[SB 207]

AN ACT REQUIRING THE INSTALLATION OF SMOKE DETECTORS IN RENTAL UNITS; AMENDING SECTION 70-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 70-24-303, MCA, is amended to read:

**"70-24-303. Landlord to maintain premises — agreement that tenant perform duties — limitation of landlord's liability for failure of smoke detector.** (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(e) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal;

(f) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant; *and*

*(g) install, in accordance with rules adopted by the state fire marshal, an approved smoke detector in each dwelling unit under his control. Upon commencement of a rental agreement, the landlord shall verify that the smoke detector in the dwelling unit is in good working order. The tenant shall maintain the smoke detector in good working order during the tenant's rental period. For purposes of this subsection, an approved smoke detector is a device that is capable of detecting visible or invisible particles of combustion and that bears a label or other identification issued by an approved testing agency having a service for inspection of materials and workmanship at the factory during fabrication and assembly.*

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(2) If the duty imposed by subsection (1)(a) of this section is greater than a duty imposed by subsections (1)(b) through *(1)(g)*, a landlord's duty shall be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a) of this section; and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

*(5) The landlord is not liable for damages caused as a result of the failure of the smoke detector required under subsection (1)(g).*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date — applicability.** This act is effective on passage and approval and applies to all rental dwelling units after January 1, 1990.

Approved April 18, 1989.

# CHAPTER NO. 568

[SB 219]

AN ACT ESTABLISHING PUBLIC HUNTING REQUIREMENTS NECESSARY FOR LANDOWNER ELIGIBILITY FOR GAME DAMAGE ASSISTANCE; GRANTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS THE DISCRETION TO PROVIDE GAME DAMAGE ASSISTANCE IN CERTAIN CIRCUMSTANCES WHEN PUBLIC HUNTING IS DENIED; AND AMENDING SECTION 87-1-225, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-225, MCA, is amended to read:

"**87-1-225. Regulation of wild animals damaging property — public hunting requirements.** *(1) Subject to the provisions of subsection*

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*(2), a landowner is eligible for game damage assistance under subsection (3) if he:*

*(a) allows public hunting during established hunting seasons; or*

*(b) does not significantly reduce public hunting through imposed restrictions.*

*(2) The department may provide game damage assistance when public hunting on a landowner's property has been denied because of unique or special circumstances that have rendered public hunting inappropriate.*

*(3)* Within 48 hours after receiving a request or complaint from any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops thereon, the department shall investigate and arrange to study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method be not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. No wild ferocious animal damaging property or endangering life shall be covered by this section."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 18, 1989.

# CHAPTER NO. 569

[SB 261]

AN ACT EXEMPTING FROM THE MONTANA SUBDIVISION AND PLATTING ACT THE RELOCATION OF A COMMON BOUNDARY LINE BETWEEN A LOT WITHIN A PLATTED SUBDIVISION AND LAND ADJOINING THE PLATTED SUBDIVISION; AND AMENDING SECTION 76-3-207, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 76-3-207, MCA, is amended to read:

**"76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

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(b) divisions made outside of platted subdivisions for the purpose of a gift or sale to any member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; *and*

*(f) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. Any restrictions or requirements on the original platted lot or original unplatted parcel continue to apply to those areas.*

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) any change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) No division of land may be made under this section unless the county treasurer has certified that no real property taxes assessed and levied on the land to be divided are delinquent."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 18, 1989.

# CHAPTER NO. 570

[SB 293]

AN ACT TO PROHIBIT MALICIOUS INTIMIDATION OR HARASSMENT OF PERSONS BECAUSE OF RACE, CREED, RELIGION, COLOR, NATIONAL ORIGIN, OR INVOLVEMENT IN CIVIL RIGHTS OR HUMAN RIGHTS ACTIVITIES; AND TO ENHANCE THE PENALTY FOR OTHER OFFENSES COMMITTED BECAUSE OF THE VICTIM'S RACE, CREED, RELIGION, COLOR, NATIONAL ORIGIN, OR INVOLVEMENT IN CIVIL RIGHTS OR HUMAN RIGHTS ACTIVITIES.

WHEREAS, the Legislature finds and declares that it is the right of every person, regardless of race, creed, religion, color, national origin, or political or religious ideas, to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of groups and individuals; and

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WHEREAS, the Legislature recognizes the constitutional right of every citizen to harbor and express beliefs on any subject and to associate with others who share similar beliefs; and

WHEREAS, it is not the intent, by enactment of [this act], to interfere with the exercise of rights protected by the Constitution of the State of Montana or the United States; and

WHEREAS, the Legislature further recognizes and finds that the advocacy of unlawful acts by groups or individuals against other persons or groups for the purpose of inciting and provoking damage to property and bodily injury or death to persons is not constitutionally protected, poses a threat to public order and safety, and should be subject to criminal sanctions.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Malicious intimidation or harassment.** (1) A person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, he purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

(a) causes bodily injury to another;

(b) causes reasonable apprehension of bodily injury in another; or

(c) damages, destroys, or defaces any property of another or any public property.

(2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without his or her permission.

Section 2. **Penalty.** A person convicted of the offense of malicious intimidation or harassment shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $5,000, or both.

Section 3. **Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities.** (1) A person who has been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) shall run consecutively to the sentence, except as provided in 46-18-222.

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Section 4. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 18, 1989.

# CHAPTER NO. 571

[SB 342]

AN ACT TO PROHIBIT THE DISPLAY AND DISSEMINATION OF OBSCENE MATERIAL TO MINORS; AMENDING SECTIONS 45-8-201 AND 45-8-203, MCA; AND REPEALING SECTION 45-8-202, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [this act], the following definitions apply:

(1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

(3) "Minor" means a person under 18 years of age.

(4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience of one or more, with or without consideration.

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(6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

(8) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality.

Section 2. **Public display or dissemination of obscene material to minors.** (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) he had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

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(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

Section 3. **Notice of violation.** Before a county attorney may prosecute a person for a continuing violation of [section 2], he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending.

Section 4. **Penalties.** (1) A person who is convicted of violating [section 2] is guilty of a misdemeanor and may be fined an amount not to exceed $500 or be imprisoned for a term not to exceed 6 months, or both.

(2) For purposes of [section 2], multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

Section 5. Section 45-8-201, MCA, is amended to read:

"**45-8-201. Obscenity.** (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

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(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in *subsection* (2)(a)(i), (ii), or (iii) in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of this section and *[section 2]*."

Section 6. Section 45-8-203, MCA, is amended to read:

**"45-8-203. Certain motion picture theater employees not liable for prosecution.** (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and *[section 2]* or under any city or county ordinance for exhibiting or possessing with

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intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public."

Section 7. **Repealer.** Section 45-8-202, MCA, is repealed.

Section 8. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 45, chapter 8, part 2, and the provisions of Title 45, chapter 8, part 2, apply to [sections 1 through 4].

Approved April 18, 1989.

# CHAPTER NO. 572

[HB 1]

AN ACT TO AMEND THE REVENUE OVERSIGHT COMMITTEE'S REVIEW FUNCTIONS AND POWERS OVER DEPARTMENT OF REVENUE RULES TO CORRESPOND WITH THOSE REVIEW FUNCTIONS AND POWERS GRANTED THE ADMINISTRATIVE CODE COMMITTEE OVER OTHER AGENCY RULES; AND AMENDING SECTIONS 2-4-402 AND 5-18-107, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-4-402, MCA, is amended to read:

**"2-4-402. Powers of the committee — duty to review rules — exception for revenue rules.** (1) *Except for rules proposed by the department of revenue, the administrative code* committee shall review all proposed rules filed with the secretary of state.

(2) *The revenue oversight committee shall review all rules* proposed by the department of revenue.

(3) The *administrative code* committee may:

(a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter."

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Section 2. Section 5-18-107, MCA, is amended to read:

**"5-18-107. Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of revenue — committee reports.** (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

*(a) request and obtain the department's rulemaking records for the purpose of reviewing compliance with 2-4-305;*

*(b)* prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department;

*(c)* submit oral or written testimony at a rulemaking hearing;

*(d) require the department to appear before the committee and respond to the committee's recommendations for the adoption, amendment, or rejection of a rule;*

*(e)* require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

*(f)* recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412;

*(g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule under the Montana Administrative Procedure Act in the state and federal courts and administrative agencies;*

*(h) review the incidence and conduct of the department's administrative proceedings;*

*(i) require the department to publish the full or partial text of any pertinent material adopted by reference under 2-4-307;*

*(j) by an affirmative vote of at least six members of the committee, contract for the preparation of an economic impact statement or require the department to prepare an economic impact statement, following the provisions of 2-4-405;*

*(k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.*

*(l) make written objection to a proposed rule of the department for lack of substantial compliance with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's response, and the procedure for and effect of publication of the objection in the Montana Administrative Register and the Administrative Rules of Montana.*

*(m) petition the department for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such*

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*a ruling is subject to judicial review in the same manner as decisions or orders in contested cases under the Montana Administrative Procedure Act.*

*(n) petition for judicial review of the sufficiency of the reasons for the department's finding of imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule proposed by the department under 2-4-303; and*

*(o) require the department to conduct the biennial review of its rules as required in 2-4-314 and report its findings to the committee.*

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue."

Approved April 20, 1989.

# CHAPTER NO. 573

[HB 173]

AN ACT TO PHASE IN OVER 6 YEARS THE REDUCTION IN A SCHOOL'S MAXIMUM GENERAL FUND BUDGET RESULTING FROM AGGREGATION OF AVERAGE NUMBER BELONGING (ANB) REQUIRED BY CHAPTER 498, LAWS OF 1987; AMENDING SECTION 3, CHAPTER 498, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3, Chapter 498, L. 1987, is amended to read:

**"Section 3. Applicability.** This act is applicable during school fiscal *years 1990 through 1995 in the following manner:*

*(1) one-fifth of the reduction in the maximum general fund budget resulting from the aggregation of ANB required by this act, as calculated from school attendance during school fiscal year 1990, applies in budgeting for school fiscal year 1991;*

*(2) two-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1991, applies in budgeting for school fiscal year 1992;*

*(3) three-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1992, applies in budgeting for school fiscal year 1993;*

*(4) four-fifths of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1993, applies in budgeting for school fiscal year 1994;*

*(5) 100% of the reduction in the maximum general fund budget resulting from the aggregation of ANB, as calculated from school attendance during school fiscal year 1994, applies in budgeting for school fiscal year 1995.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Section 4. **Termination.** [This act] terminates on the effective date of a new equalized school funding system.

Approved April 20, 1989.

# CHAPTER NO. 574

[HB 227]

AN ACT TO REQUIRE THAT TRUSTEES OF A SCHOOL DISTRICT NOTIFY A TENURE TEACHER OF REELECTION BY MAY 1; AMENDING SECTION 20-4-205, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-4-205, MCA, is amended to read:

"**20-4-205. Notification of tenure teacher reelection — acceptance.** (1) The trustees shall provide written notice by *May 1* to all tenure teachers who have been reelected. Any tenure teacher who does not receive notice of reelection or termination shall be automatically reelected for the ensuing school fiscal year.

(2) Any tenure teacher who receives notification of his reelection for the ensuing school fiscal year shall provide the trustees with his written acceptance of the conditions of such reelection within 20 days after the receipt of the notice of reelection, and failure to so notify the trustees within 20 days shall constitute conclusive evidence of his nonacceptance of the tendered position."

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Section 2. **Applicability.** [This act] applies to teacher contracts issued for the school fiscal year 1990.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1989.

# CHAPTER NO. 575

[HB 390]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE CRIMINAL SALE OF DANGEROUS DRUGS; PROVIDING FOR A MANDATORY 2-YEAR PRISON SENTENCE FOR THE SALE OF COCAINE IN ANY OF ITS FORMS; PROVIDING THAT THE FIRST 2 YEARS OF A SENTENCE OF IMPRISONMENT FOR THE SALE OF CERTAIN DANGEROUS DRUGS TO MINORS MAY NOT BE DEFERRED OR SUSPENDED; AMENDING SECTIONS 45-9-101, 46-18-201, AND 46-18-231, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 45-9-101, MCA, is amended to read:

"**45-9-101. Criminal sale of dangerous drugs.** (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of *a narcotic drug, as defined in 50-32-101(18)(d), or* an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

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(5) A person who was an adult at the time of sale and who is convicted of criminal sale of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 2. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. *Reasonable* restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court appointed counsel as provided in 46-8-113;

(ix) community service;

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(x) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. *Reasonable* restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(xi).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for any misdemeanor or for a period not exceeding 6 years for any felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail time already served.

(4) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), (3), *and (5)(d),* 45-9-102(3), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-502(3), 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of such imprisonment."

Section 3. Section 46-18-231, MCA, is amended to read:

**"46-18-231. Fines in felony and misdemeanor cases.** (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of

an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), *and (5)(d)*, 45-9-102(3), and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1989.

# CHAPTER NO. 576

[HB 415]

AN ACT TO EXEMPT THE FIRST $15,000 OR LESS OF VALUE OF HAND-HELD TOOLS FROM PROPERTY TAXATION; AMENDING SECTIONS 15-6-137, 15-6-138, AND 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-137, MCA, is amended to read:

**"15-6-137. Class seven property — description — taxable percentage.** (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

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(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property;

(d) *any* tools *or* implements *that are not included in another class or that are exempt under 15-6-201(1)(r),* and machinery used to repair and maintain machinery not used for manufacturing and mining purposes.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

(3) Class seven property is taxed at 8% of its market value."

Section 2. Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools *that are not exempt under 15-6-201(1)(r),* and supplies except:

(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools *that are not exempt under 15-6-201(1)(r),* and supplies except those included in class five;

(d) all trailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2);

(e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;

(f) trucks having a rated capacity of more than 1 ½ tons, including those prorated under 15-24-102; and

(g) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value."

Section 3. Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced

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at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of *the* buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. *This* property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to

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its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

*(r) provided the tools are owned by the taxpayer, the first $15,000 or less of market value of tools that are customarily hand-held and that are used to:*

*(i) construct, repair, and maintain improvements to real property; or*

*(ii) repair and maintain machinery, equipment, appliances, or other personal property.*

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure. **(Subsection (1)(c) applicable to taxable years beginning after December 31, 1987—sec. 4, Ch. 455, L. 1987.)"**

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

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Section 5. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved April 20, 1989.

# CHAPTER NO. 577

[HB 588]

AN ACT REVISING THE FEE IN LIEU OF TAX ON BOATS AND EXTENDING THE FEE TO INCLUDE MOTORIZED PONTOONS AND PERSONAL WATERCRAFT; PROVIDING A VARIABLE FEE SCHEDULE; AMENDING SECTIONS 23-2-502, 23-2-512, AND 23-2-515 THROUGH 23-2-519, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-502, MCA, is amended to read:

**"23-2-502. Definitions.** As used in this part, unless the context clearly requires a different meaning, the following definitions apply:

(1) "Certificate of number" means the certificate issued annually by the county treasurer to the owner of a motorboat or by the department of justice to dealers or manufacturers, assigning such motorboat an identifying number and containing such information as required.

(2) "Certificate of ownership" means a certificate issued by the department of justice identifying the owner of a motorboat or sailboat 12 feet in length or longer.

(3) "Dealer" means any person who engages in whole or in part in the business of buying, selling, or exchanging new and unused vessels or used vessels, or both, either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

(4) "Department" means the department of fish, wildlife, and parks of the state of Montana.

(5) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

(6) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(7) "License decals" means the serially numbered license stickers issued annually by the county treasurer and displayed as required by law.

(8) "Lienholder" means a person holding a security interest.

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(9) "Manufacturer" means any person engaged in the business of manufacturing or importing new and unused vessels or new and unused outboard motors for the purpose of sale or trade.

(10) "Motorboat" means any vessel, *including a canoe, kayak, rubber raft, or pontoon,* propelled by any machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. The term includes boats temporarily equipped with detachable motors or engines but does not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(11) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by an agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(14) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(15) "Person" means an individual, partnership, firm, corporation, association, or other entity.

*(16) "Personal watercraft" means any vessel 12 feet in length or less that uses an internal combustion engine powering a water jet pump as its primary source of propulsion and that is designed to be operated by a person in a sitting, standing, or kneeling position.*

*(17)* "Security interest" means an interest that is reserved or created by an agreement that secures payment or performance of an obligation and is valid against third parties generally.

*(18)* "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions.

*(19)* "Vessel" means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

*(20)* "Waters of this state" means any waters within the territorial limits of this state."

Section 2. Section 23-2-512, MCA, is amended to read:

**"23-2-512. Identification number.** (1) The owner of each motorboat, sailboat, *or personal watercraft* requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat, sailboat, *or personal watercraft* is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, *or personal watercraft* and be accompanied by a fee of $2. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, *or personal watercraft* and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, *or a personal watercraft* for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) Should the ownership of a motorboat, sailboat, *or personal watercraft* change, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest,

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in a motorboat, sailboat, *or personal watercraft* numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, *or personal watercraft*. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, *or personal watercraft*. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, *or personal watercraft* does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, *or personal watercraft* or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, *or personal watercraft*. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued may be placed in the proximity of the identifying number. No numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, *or personal watercraft* by its identifying number may be carried as to interfere with the motorboat's, sailboat's, *or personal watercraft's* identification. No number other than the number and license decal assigned to a motorboat, sailboat, *or personal watercraft* or granted reciprocity under this part may be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, *or personal watercraft*.

(b) The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, *or personal watercraft* whenever the motorboat, sailboat, *or personal watercraft* is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, *or personal watercraft*, but a rental agreement must be carried on board livery motorboats, sailboats, *or personal watercraft* in place of the certificate of number.

(10) Fees, other than the fee in lieu of tax, collected under this section shall be transmitted to the state treasurer, who shall deposit the fees in the motorboat or sailboat certificate identification account of the state special revenue fund. These fees shall be used only for the administration and enforcement of this part, as amended.

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(11) An owner of a motorboat, sailboat, *or personal watercraft* must within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, *or personal watercraft's* identifying number and the owner's name when the motorboat, sailboat, *or personal watercraft* is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 3. Section 23-2-515, MCA, is amended to read:

**"23-2-515. License decals to be displayed.** (1) Every Montana motorboat, sailboat, *or personal watercraft* numbered in accordance with the provisions of 23-2-512 *or* 23-2-513 shall be required to display license decals. For this purpose the county treasurer, upon proof of payment of the fee in lieu of tax *as required by 15-16-202* for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, *or personal watercraft*, shall issue a pair of decals prepared and furnished by the department of justice with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the department of justice and shall be a color differing from the preceding year. The license decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

(3) License decals shall be displayed only in the following manner: one valid license decal on each side of the forward half, 3 inches aft of the identifying numbers."

Section 4. Section 23-2-516, MCA, is amended to read:

**"23-2-516. Fee in lieu of tax for motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons.** (1) There is a fee in lieu of property tax as prescribed in 23-2-517 imposed on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, *personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons.* The fee is in addition to the annual fee required by 23-2-512 for filing of the application for a certificate of number.

(2) The fee imposed by subsection (1) need not be paid by a dealer for motorboats, sailboats, *personal watercraft, motorized canoes, motorized rubber rafts, or motorized pontoons* that constitute inventory of the dealership."

Section 5. Section 23-2-517, MCA, is amended to read:

**"23-2-517. Fees for motorboats, sailboats, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons.** (1) The owner of a motorboat 10 feet in length or longer or a sailboat 12 feet in length or longer shall pay a fee based on the length *and age* of the motorboat or sailboat *as follows:*

*(a)* The fee *schedule* for a motorboat at least 10 feet in length but less than 14 feet in length or sailboat at least 12 feet in length but less than 14 feet in length is *as follows:*

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*(i) for a motorboat or sailboat less than 5 years of age, $7.50;*

*(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $5.65; and*

*(iii) for a motorboat or sailboat 10 years of age or older, $3.75.*

*(b)* The fee *schedule* for a motorboat or sailboat at least 14 feet in length but less than 16 feet in length is *as follows:*

*(i) for a motorboat or sailboat less than 5 years of age, $15;*

*(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $11.25; and*

*(iii) for a motorboat or sailboat 10 years of age or older, $7.50.*

*(c)* The fee *schedule* for a motorboat or sailboat at least 16 feet in length but less than 17 feet in length is *as follows:*

*(i) for a motorboat or sailboat less than 5 years of age, $32;*

*(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $24; and*

*(iii) for a motorboat or sailboat 10 years of age or older, $16.*

*(d)* The fee *schedule* for a motorboat or sailboat at least 17 feet in length but less than 19 feet in length is *as follows:*

*(i) for a motorboat or sailboat less than 5 years of age, $3 a foot or fraction of a foot;*

*(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $2.25 a foot or fraction of a foot; and*

*(iii) for a motorboat or sailboat 10 years of age or older, $1.50 a foot or fraction of a foot.*

*(e)* The fee *schedule* for a motorboat or sailboat 19 feet in length or longer is *as follows:*

*(i) for a motorboat or sailboat less than 5 years of age, $4 a foot or fraction of a foot;*

*(ii) for a motorboat or sailboat 5 years of age or older but less than 10 years of age, $3 a foot or fraction of a foot; and*

*(iii) for a motorboat or sailboat 10 years of age or older, $2 a foot or fraction of a foot.*

*(2) The owner of a personal watercraft shall pay a fee based on the age of the watercraft as follows:*

*(a) The fee for a personal watercraft less than 4 years of age is $22.*

*(b) The fee for a personal watercraft 4 years of age or older is $15.*

*(3) The fee for a motorized canoe, a canoe or kayak propelled by wind, or a motorized rubber raft is $7.50, regardless of its length or age.*

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*(4) The fee for a motorized pontoon is $20, regardless of its length or age.*"

Section 6. Section 23-2-518, MCA, is amended to read:

"**23-2-518. Disposition of fees in lieu of tax.** The county treasurer shall distribute all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, *personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons* pursuant to 23-2-516 and 23-2-517 in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed."

Section 7. Section 23-2-519, MCA, is amended to read:

"**23-2-519. Penalty — disposition.** (1) Failure to pay the fee in lieu of tax as provided for in 23-2-517 is a misdemeanor, punishable by a fine equal to five times the fee in lieu of tax that is due on the motorboat, sailboat, *personal watercraft, motorized canoe, motorized rubber raft, or motorized pontoon* for the current year of registration.

(2) All fines collected pursuant to subsection (1) must be distributed in the following ratio:

(a) 50% to the general fund of the county in which the motorboat, sailboat, *personal watercraft, motorized canoe, motorized rubber raft, or motorized pontoon* is issued a certification number; and

(b) 50% to the motorboat account of the state special revenue fund for use by the department in the enforcement of this part."

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Retroactive applicability date.** [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1989.

# CHAPTER NO. 578

[SB 449]

AN ACT TO ALLOW THE DEPARTMENT OF JUSTICE TO ISSUE A MOTOR VEHICLE CERTIFICATE OF TITLE WHEN AN APPLICANT CANNOT PROVE VEHICLE OWNERSHIP IF THE APPLICANT FURNISHES THE REQUIRED BOND AND AFFIDAVIT.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Affidavit and bond for certificate.** (1) If an applicant for a motor vehicle certificate of title cannot provide the department with a certificate of title transferred to the applicant, the department may issue

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a certificate of title for the vehicle if the applicant furnishes an affidavit in a form prescribed by the department.

(2) The affidavit must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and include:

(a) the facts and circumstances through which the applicant acquired ownership and possession of the motor vehicle;

(b) information as required by the department to enable it to determine what security interests, liens, and encumbrances against the motor vehicle, if any, are outstanding against the motor vehicle;

(c) the date and the amount secured by the security interests, liens, and encumbrances, if any; and

(d) a statement that the applicant has the right to have a certificate of title issued.

(3) If after examination of the application, affidavit, and any other evidence the department determines that a certificate of title for the motor vehicle should be issued to the applicant, the department shall require the applicant to file with the department a good and sufficient bond before issuing the certificate of title. The bond must be:

(a) in an amount equal to the value of the motor vehicle as determined under the provisions of 61-3-503(1)(c) for the year in which the application for certificate of title is made;

(b) conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle, and any respective successors in interest, against expenses, losses, or damages caused by the issuance of the certificate or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the motor vehicle.

(4) Any interested person has a right of action to recover on the bond for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(5) Unless the department has been notified of a pending action to recover the bond, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer registered in this state.

Section 2. **Extension of authority.** Any existing authority of the Department of Justice to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 2, and the provisions of Title 61, chapter 3, part 2, apply to [section 1].

Approved April 20, 1989.

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# CHAPTER NO. 579

[SB 99]

AN ACT TO IMPOSE STRICTER SANCTIONS FOR A GENERAL ASSISTANCE RECIPIENT'S REFUSAL TO COMPLY WITH STATE WORK REQUIREMENTS; TO PROVIDE FOR TERMINATION OF ASSISTANCE IF AN EMPLOYABLE RECIPIENT WITHOUT GOOD CAUSE REFUSES TO PARTICIPATE IN A REQUIRED WORK PROGRAM OR REFUSES TO REGISTER FOR EMPLOYMENT, MAINTAIN AN ACTIVE JOB REGISTRATION FILE, OR ACTIVELY PURSUE AND ACCEPT AVAILABLE EMPLOYMENT; AMENDING SECTIONS 53-3-303 AND 53-3-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-3-303, MCA, is amended to read:

**"53-3-303. Conditions of eligibility.** *(1) As a condition of eligibility for general relief assistance, an employable* recipient must*:*

*(a)* register for employment with the department of labor and industry*;*

*(b) maintain an active job registration file;* and

*(c) actively pursue and* accept available employment within his or her capability.

*(2)* Refusal *without good cause* to *comply with the requirements of subsection (1)* will render the *individual* recipient, *but not the rest of that recipient's household,* ineligible for general relief assistance *for 3 months following the first refusal and for 6 months following any subsequent refusal.*"

Section 2. Section 53-3-305, MCA, is amended to read:

**"53-3-305. Effect of refusal to participate in mandatory programs.** Any recipient of general relief who is subject to the provisions of 53-3-304 *[and [section 10, Senate Bill No. 101, (LC 122)]]* and who without *good* cause refuses to participate in *a required* program or to perform work assigned to him as therein provided shall lose *eligibility for general relief for 3 months following the first refusal and for 6 months following any subsequent refusal.*"

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Coordination instruction.** If [Senate Bill No. 101 (LC 122)] is not passed and approved, the bracketed language in [section 2 of this act] is void.

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved April 20, 1989.

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# CHAPTER NO. 580

[SB 101]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO GENERAL RELIEF ASSISTANCE; TO ESTABLISH EMPLOYABILITY AS A CLASSIFICATION FOR DETERMINING ELIGIBILITY FOR GENERAL RELIEF ASSISTANCE; TO LIMIT THE DURATION OF ASSISTANCE PROVIDED TO EMPLOYABLE PERSONS; TO REQUIRE EMPLOYABLE RECIPIENTS TO PARTICIPATE IN A JOB SEARCH, TRAINING, AND WORK PROGRAM OR OTHER SPECIAL PROGRAM DESIGNED TO HELP RECIPIENTS OVERCOME PROBLEMS THAT IMPAIR THEIR EMPLOYMENT POTENTIAL; AMENDING SECTIONS 53-3-109, 53-3-205, 53-3-206, 53-3-209, 53-3-304, 53-3-308, AND 53-3-313, MCA; REPEALING SECTION 53-3-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Legislative findings.** The legislature finds that:

(1) Article XII, section 3, of the Montana constitution grants the legislature authority to determine the public policy governing the provision of public assistance;

(2) public policy requires that certain persons who are in need should be provided with assistance through programs of general relief;

(3) general relief assistance, along with other assistance programs, should be available to provide:

(a) basic necessities that allow minimum subsistence compatible with decency and health; and

(b) financial assistance for medical services necessary for the treatment of a person's serious medical condition. However, general relief medical assistance should not be available to nonindigent persons who have catastrophic medical expenses.

(4) general relief assistance should not be available to those persons who have adequate income or resources to support themselves, nor should general relief assistance be provided in duplication of services and benefits available through other federal or state assistance programs;

(5) the legislature, in order to allocate scarce welfare resources to those most in need, may establish a reasonable classification that distinguishes between persons who are chronically in need of assistance and persons who are transitionally needy; and

(6) as the basis for the classification of recipients, it is reasonable to conclude that:

(a) some persons are in need of assistance because their age or physical, emotional, or mental condition renders them incapable of substantial, gainful employment. Such persons are chronically needy and should be entitled to general relief assistance for the duration of their need.

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(b) some persons are in need of assistance because they are unemployed or lack the skills, training, or experience to become employed. Such persons should be considered transitionally needy and should be provided only temporary, interim assistance and state help in obtaining gainful employment. In addition, because some persons who are transitionally needy suffer from serious personal problems or barriers to employment, the state should provide assistance to enable these persons to overcome the problems that impair their employment potential.

Section 2. **Legislative policy and intent.** Consistent with the findings in [section 1], the legislature intends that:

(1) general relief assistance should be provided to those in need, but only to the extent of such need;

(2) unemployable persons, because they are chronically in need, should be afforded general relief for as long as they have need for such assistance;

(3) employable persons, being transitionally needy, should be granted 4 months of general relief for basic necessities, which relief will be available only if such persons participate in a job search, training, and work program as required by 53-3-304; and

(4) in recognition that not all employable persons are ready to participate in the work force and that the state has a duty to protect the welfare of children, nonmedical general relief should be provided for 6 months to persons who meet the eligibility criteria provided in [section 4].

Section 3. Section 53-3-109, MCA, is amended to read:

**"53-3-109. Definitions.** For the purposes of this chapter, the following definitions apply:

*(1)* "Basic necessities" means food, shelter, utilities, and personal needs.

*(2)* "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

*(3) "Employable" means the condition of a person who is not unemployable. A person who is employable is transitionally needy and is not eligible for general relief for basic necessities except as provided in [section 4].*

(4) "General relief" *or "general relief assistance"* means a program of public assistance for basic necessities and medical needs *for* those persons determined to be eligible for *such* assistance.

(5) "Household" means:

*(a) a collective body of persons consisting of spouses or parents and their children who reside together in the same residence; or*

*(b)* all *other* persons who by choice *or* necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

(6) "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits, *that is* reasonably certain to be received or *is actually received during the month by members of* a household.

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*(7)* "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.

*(8)* "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

*(9)* "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

*(10) "Serious barrier to employment" means a limitation in obtaining employment that results from:*

*(a) a lack of work skills, experience, or training necessary to secure employment;*

*(b) the failure to attain a high school education or its equivalent; or*

*(c) illiteracy.*

*(11)* "Serious medical condition" means a physical condition, *including pregnancy,* that causes a serious health risk to a person and for which treatment is medically necessary. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm it through an expert medical review. Necessary treatment includes prenatal care and such other elective treatments as determined by department rule to be medically necessary.

*(12) (a) "Unemployable" means the condition of a person who:*

*(i) is at least 55 years of age and has a limited ability to obtain or retain suitable employment because of advanced age;*

*(ii) has a serious physical, emotional, or mental handicap that prevents him from being employed in any substantial, gainful employment; or*

*(iii) suffers from a permanent or temporary illness, injury, or incapacity that prevents the person from working in any substantial, gainful employment.*

*(b) A person who is unemployable is chronically needy and must be provided general relief as provided in [section 4]."*

Section 4. **Eligibility classifications — duration of assistance.** (1) For purposes of eligibility, a recipient of general relief must be classified as either employable or unemployable.

(2) Unemployable persons may receive general relief for as long as they remain eligible.

(3) Except as provided in subsection (4), employable persons who are otherwise eligible may receive general relief for basic necessities for a period not to exceed 4 months in any 12-month period.

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(4) An employable person may receive nonmedical general relief for a maximum of 6 months in any 12-month period if such person:

(a) has a serious barrier to employment and is willing to participate in a program to overcome that employment barrier;

(b) suffers from drug or alcohol dependency and, subject to available funding, is undergoing active treatment in an approved program; or

(c) is the head of a household that includes minor dependent children and is enrolled in a job search, training, and work program as required by 53-3-304.

(5) Assistance granted prior to January 1, 1990, may not be considered in determining eligibility.

Section 5. Section 53-3-205, MCA, is amended to read:

**"53-3-205. Eligibility for general relief.** (1) *Except as otherwise provided under this chapter, a* person may receive general relief for basic necessities if the household is determined to be eligible under the provisions of this section.

(2) A *person* is eligible for general relief *assistance* if *his total* household income, exclusive of the first $50 earned each month by each household member, does not exceed that set forth in the following table:

| Number of Persons in Household | Monthly Income Standard |
|---|---|
| 1 | $212 |
| 2 | *286* |
| 3 | *359* |
| 4 | *433* |
| 5 | *507* |
| 6 | *580* |
| 7 | *654* |
| 8 | *727* |
| 9 | *762* |
| 10 or more | *795* |

*(3)* (a) *If a person's household* income exceeds the monthly income standard *provided in subsection (2)* because of receipt of lump-sum income, *he is* ineligible for general relief for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the *lump-sum income* was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of *lump-sum income* does not preclude eligibility for general relief medical assistance.

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*(4)* All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

*(5) Eligibility for nonmedical general relief assistance must be determined prospectively, based on household income and other relevant circumstances reasonably certain to exist in the month in which assistance is to be provided.*

*(6) (a) Except as provided in subsection (6)(b), the equity value of all household resources must be considered available to meet the needs of the individual applying for general relief.*

*(b)* The following resources of a household must be excluded from consideration of resources for eligibility purposes:

*(i)* the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

*(ii)* a motor vehicle that has no more than $1,500 in equity value;

*(iii)* personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

*(iv)* tools of a trade that are essential to the current or future employment of a household member.

*(7)* A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

*(8)* A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

*(9)* For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

*(10)* Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination."

Section 6. Section 53-3-206, MCA, is amended to read:

**"53-3-206. Eligibility for general relief medical assistance.** (1) In order to be considered for eligibility for general relief medical assistance, a person must be found to have a serious medical condition.

(2) Eligibility for general relief medical assistance must be determined as provided in *53-3-205 and* this section. A person with a serious medical condition must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

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(3) All persons who reside in the same residence and are legally related to or responsible for each other are considered to be one household for purposes of determining general relief medical assistance.

(4) All individual or household resources must be used to offset medical obligations except those excluded in 53-3-205*(5)*.

(5) To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in 53-3-205*(1)* is eligible for such medical assistance.

(6) In a county with state-assumed welfare services, a person is not eligible for medical services if the household in which he resides has an average monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided in excess of that set forth in the following table:

| Family Size | Monthly Income Level |
|---|---|
| 1 | $ 287 |
| 2 | 433 |
| 3 | 526 |
| 4 | 618 |
| 5 | 714 |
| 6 | 804 |
| 7 | 896 |
| 8 | 988 |
| 9 | 1,081 |
| 10 | 1,173 |
| 11 | 1,194 |
| 12 | 1,215 |
| 13 | 1,236 |
| 14 | 1,256 |
| 15 | 1,277 |
| 16 or more | 1,298" |

Section 7. Section 53-3-209, MCA, is amended to read:

**"53-3-209. Period of eligibility.** (1) The period of eligibility for receipt of general relief for basic necessities is 1 month. *Except* as provided in *subsection* (3), *a* person may seek to establish eligibility for the succeeding month prior to the end of the current month of eligibility.

*(2)* Eligibility for general relief medical assistance *is granted for a period of 1 month and* terminates when the serious medical condition of the person has been treated. *Except as provided in subsection (3), continued eligibility for general relief medical assistance may be established in any subsequent month.*

*(3)* The period of eligibility for any type of general assistance terminates at any time the county welfare board or the department determines that the household:

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(a) no longer meets the applicable eligibility requirements; or

(b) received general relief by means of fraud or mistake."

Section 8. Section 53-3-304, MCA, is amended to read:

**"53-3-304. Power to require employable recipients to participate in job search, training, and work programs.** (1) The department shall cooperate with the department of labor and industry and other designated agencies to initiate, promote, and develop job search, training, and work programs that will contribute to the employability of persons receiving general relief under the provisions of this chapter. These programs must be designed to preserve and improve the work habits and job-finding skills of recipients for whom jobs are not otherwise immediately available.

(2) For each county with state-assumed welfare services, the department shall contract with the department of labor and industry or other designated agencies to institute a job search, training, and work program that provides *employable* general relief recipients with the necessary job-finding skills to seek unsubsidized employment independently.

(3) *Except as otherwise provided in this chapter, in* a county with state-assumed welfare services, an *employable* recipient of general relief shall enroll in a structured job search and training program at an employment office or other site designated by the department. The program *may* include the following elements:

(a) assessment and testing;

(b) an employability plan;

(c) remedial education or job skills training, if it is called for in the employability plan and if it provides for immediate referral to an appropriate Job Training Partnership Act program;

(d) a job readiness and job search program that *may* include:

(i) self-assessment and occupational testing;

(ii) instruction in completing applications, writing resumes, and preparing for interviews;

(iii) identification of and contact with potential employers; and

(iv) participation in simulated job interviews;

(e) a supervised effort to find employment; and

(f) efforts to address barriers to employment.

(4) (a) In addition to the training required in subsection (3), if a public agency or a private nonprofit agency has work available which a recipient of general relief is capable of performing or the department of social and rehabilitation services is required to operate a work program under the provisions of 53-2-822, then the county department of public welfare or the department of social and rehabilitation services may require a recipient to perform work at the minimum wage or may pay a recipient at the prevailing rate of wages paid in that county by that agency for similar work, to

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be paid from the county poor fund or state funds, in place of granting him general relief.

(b) No currently employed worker may be displaced by any recipient (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

(c) No recipient may be employed when any other person is on layoff from the same or any substantially equivalent job or when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a recipient whose wages are subsidized under this section.

(5) The county department of public welfare or the department of social and rehabilitation services, as the case may be, shall provide coverage under the Workers' Compensation Act for those recipients of general relief working under the provisions hereof and may enter into such agreements with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.

(6) A recipient who has completed the assessment and testing portions of the program and has developed an employability plan shall participate in the job readiness and job search program provided for in subsection (3)(d) for at least 80 hours in any 5-week period and shall spend at least 8 hours a week in a supervised effort to find employment.

(7) A recipient who has completed the job search program provided for in subsection (3) shall:

(a) continue to spend at least 8 hours a week in a supervised effort to find employment; and

(b) for the duration of his eligibility for general relief, spend 32 hours a week, as called for in the employability plan, in:

(i) remedial education;

(ii) counseling;

(iii) job skills training;

(iv) work for a public agency or a private nonprofit agency, as required in subsection (4); or

(v) job-seeking or other related activities.

*(8)* Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the area where it is proposed to assign the recipient to work or training, an opportunity must be provided for that organization to submit comments with respect to such proposal.

*(9)* No work program may impair existing contracts for services or collective bargaining agreements, and no work program that would be inconsistent with the terms of a collective bargaining agreement may be undertaken without the written concurrence of the labor organization and employer concerned."

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Section 9. Section 53-3-308, MCA, is amended to read:

**"53-3-308. Responsibility for general relief.** (1) The county boards of public welfare and the department, in accordance with this chapter and other relevant statutes, are responsible for the provision of general relief as follows:

(a) Counties without state-assumed welfare services shall provide general relief consistent with their duties as specified in Title 53, chapter 2, parts 3 and 7, and this chapter.

(b) In counties with state-assumed welfare services, general relief must be provided by the department and must be consistent with its duties as specified in Title 53, chapter 2, part 8, and this chapter.

(2) In counties without state-assumed welfare services, general relief must be paid from the county poor fund as authorized in 53-2-321 through 53-2-323.

(3) In counties with state-assumed welfare services, general relief must be paid from and may not exceed money available through:

(a) a general appropriation for such purpose;

(b) county mill levies as provided for in 53-2-813; and

(c) federal or other assistance."

Section 10. **Services for recipients in need of special assistance.** (1) Unless otherwise exempted, in a county with state-assumed welfare services, a person who has a serious barrier to employment or who suffers from drug or alcohol dependency shall report to the agency designated pursuant to 53-3-304(2) to implement a job search, training, and work program for the purpose of receiving an assessment to determine whether the person is likely to benefit from counseling, therapy, or rehabilitation. The agency shall require that the person be enrolled in either:

(a) a job search, training, and work program established under 53-3-304, except that he need not participate in the job search program under 53-3-304(3)(d) until the agency determines that he is ready to participate in the work force; or

(b) a program designed specifically to help that person overcome problems that impair the potential for employment.

(2) Subject to available funding, a program provided for in subsection (1)(b) may include the following elements:

(a) assessment and testing;

(b) an employability plan;

(c) remedial education or job skills training, if required by the employability plan; and

(d) services, including counseling, therapy, and rehabilitation, to address serious barriers to employment and drug or alcohol dependency.

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(3) In order to encourage rehabilitation, the department may restrict services to persons suffering from drug or alcohol dependency to one intervention through the provision of services described in subsections (2)(a) through (2)(d). The department may continue to provide up to 3 months of additional benefits for those persons participating in a drug or alcohol rehabilitation program. This 3-month extension extends those limitations in [section 4].

Section 11. **Coordination requirements — consolidation of programs authorized.** (1) The governor shall assure that program activities under 53-3-304 and [section 10] are coordinated with programs administered under the federal Job Training Partnership Act and any other relevant employment, training, education, or work program in this state.

(2) The governor may consolidate the program provided for in 53-3-304 and [section 10] with other programs in order to maximize coordination of program activities as required in subsection (1) and to prevent overlapping and duplication of services.

Section 12. Section 53-3-313, MCA, is amended to read:

"**53-3-313. Selection of medical providers — conditions of participation.** *(1)* In arranging for medical care for those unable to provide it for themselves, the county board of public welfare or the department may select a medical provider.

*(2) As a condition of participation in the general relief medical program, a provider of medical services must accept as payment in full the amount paid by the state or county for such services.*

*(3) No provider of medical services may seek from a recipient any payment in addition to the amount paid by the state or county for such services.*"

Section 13. **Repealer.** Section 53-3-108, MCA, is repealed.

Section 14. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 15. **Codification instruction.** [Sections 1, 2, 4, 10, and 11] are intended to be codified as an integral part of Title 53, chapter 3, and the provisions of Title 53, chapter 3, apply to [sections 1, 2, 4, 10, and 11].

Section 16. **Coordination instruction.** If Senate Bill No. 128 [LC 129] is passed and approved and if it includes a section renumbering 53-3-304(3)(d), then the reference to 53-3-304(3)(d) in [section 10 of this act] is changed to correspond to the renumbering contained in Senate Bill No. 128 [LC 129].

Section 17. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in

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effect in all valid applications that are severable from the invalid applications.

Section 18. **Effective date.** [This act] is effective January 1, 1990.

Approved April 20, 1989.

# CHAPTER NO. 581

[SB 270]

AN ACT ESTABLISHING STANDARDS FOR TRAINING AND ACCREDITATION FOR ASBESTOS WORKERS; ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO REQUIRE PERMITS FOR ASBESTOS PROJECTS AND CHARGE FEES OF PERSONS WORKING WITH ASBESTOS; LIMITING THE TIME FOR PROCESSING OF CERTAIN ASBESTOS PROJECT PERMITS; ALLOWING THE DEPARTMENT TO ESTABLISH CRITERIA FOR ASBESTOS PROJECTS; CREATING AN ADVISORY COMMITTEE FOR RULEMAKING; PROVIDING FOR CRIMINAL AND CIVIL PENALTIES; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 3 and 4] authorize the department of health and environmental sciences to adopt rules. It is the intent of the legislature that the rules establish standards and procedures consistent with federal law for accreditation of asbestos-related occupations and control of the work performed by persons in any asbestos-related occupation, including the setting of allowable levels of indoor airborne asbestos. It is the intent of the legislature that the rules for asbestos in indoor air include standards for the use of air monitoring for:

(1) evaluation of asbestos-containing materials in buildings; and

(2) completion and reoccupancy after an asbestos project.

WHEREAS, people exposed to airborne asbestos fibers suffer significantly increased rates of lung cancer, mesothelioma, and other diseases; and

WHEREAS, to prevent unnecessary public exposure to asbestos fibers it is necessary to regulate and establish criteria for asbestos abatement practices and to require statewide standards for training and accreditation of asbestos workers.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Asbestos Control Act".

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

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(1) "Accreditation" means a certificate issued by the department that permits a person to work in an asbestos-related occupation.

(2) "Asbestos" means asbestiform varieties of chrysotile, amosite, crocidolite, anthophyllite, tremolite, or actinolite.

(3) "Asbestos-related occupation" means an inspector, management planner, project designer, contractor, supervisor, or worker for an asbestos project.

(4) "Asbestos project" means the encapsulation, enclosure, removal, repair, renovation, placement in new construction, demolition of asbestos in a building or other structure, or the transportation or disposal of asbestos-containing waste. The term does not include a project that involves less than 3 square feet in surface area or 3 linear feet of pipe.

(5) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

(6) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, state or municipal agency, political subdivision of the state, or any other entity.

Section 3. **Rulemaking authority.** The department shall adopt rules establishing standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations. The rules must be consistent with federal law and include but are not limited to:

(1) standards for training course review and approval;

(2) standards for accreditation of applicants for asbestos-related occupations;

(3) examination requirements for accreditation of applicants for asbestos-related occupations;

(4) requirements for renewal of accreditation, including periodic refresher courses;

(5) revocation of accreditation;

(6) inspection requirements for asbestos projects and asbestos-related occupations credentials;

(7) criteria to determine whether and what type of control measures are necessary for an asbestos project and whether a project is completed in a manner sufficient to protect public health, including criteria setting allowable limits on indoor airborne asbestos. A determination of whether asbestos abatement of a structure is necessary may not be based solely upon the results of airborne asbestos testing.

(8) requirements for issuance of asbestos project permits and conditions that permitholders must meet;

(9) standards for seeking injunctions, criminal and civil penalties, or emergency actions;

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(10) advance notification procedures and issuance of permits for asbestos projects; and

(11) (a) fees for:

(i) review and approval of training courses;

(ii) application for and renewal of accreditation by a person seeking to pursue an asbestos-related occupation;

(iii) issuance of asbestos project permits; and

(iv) requested inspections of asbestos projects.

(b) fees must be commensurate with costs;

(c) for asbestos projects having a cost of $3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee.

Section 4. **Facility permits — fee.** (1) The department shall provide by rule a procedure for the issuance of an annual asbestos project permit to any facility that has an asbestos health and safety program meeting department criteria and that continuously employs accredited asbestos workers. This permit allows a facility to conduct asbestos projects within the confines of the facility's controlled area during the period for which the permit is in force. The provisions of this permit may not preclude state and federal requirements for asbestos project notification.

(2) The fee for a facility permit must reflect the actual cost of the department's application review, permit issuance, and facility inspections.

Section 5. **Accreditation requirements — restrictions.** (1) To qualify for accreditation in a particular asbestos-related occupation, a person must:

(a) (i) successfully complete an asbestos-related training course for that occupation approved by the department or the United States environmental protection agency; and

(ii) pass an examination approved by the department;

(b) satisfactorily demonstrate equivalent previous training or experience in the occupation as prescribed by department rule; or

(c) have successfully completed an asbestos-related training course for that occupation, approved by the United States environmental protection agency, during the time period immediately following the passage of [this act] and ending on December 31, 1989.

(2) After January 1, 1990, a person may not:

(a) engage in an asbestos-related occupation unless accredited in that occupation by the department;

(b) conduct an asbestos project without a permit from the department or violate the conditions of a permit;

(c) contract with or employ in an asbestos-related occupation a person not accredited in that occupation by the department; or

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(d) offer a training course for an asbestos-related occupation to meet the accreditation requirements of this section unless the department approves the course.

(3) A person who applies for accreditation shall submit the fees and follow procedures prescribed by department rule.

Section 6. **Fee disposition.** The department shall deposit fees collected under [this act] into the resource indemnity trust fund created in 15-38-201.

Section 7. **Records.** A person engaged in an asbestos project shall maintain the records required by department rule concerning the nature of project activities.

Section 8. **Advisory committee.** (1) An advisory committee is created to coordinate and advise the department on the formulation of rules to be promulgated by the department under [sections 3 and 4]. This advisory committee consists of at least one representative from the following:

(a) asbestos manufacturing and construction industries;

(b) asbestos suppliers;

(c) building industries;

(d) labor organizations;

(e) employers with employees involved in on-premises asbestos abatement; and

(f) other individuals as considered appropriate by the department.

(2) The advisory committee must be abolished upon final adoption of rules provided for in [sections 3 and 4].

Section 9. **Criminal penalties — disposition of civil penalties.** (1) The department may suspend, deny, or revoke the accreditation of or reprimand a person who:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or comply with the requirements of [this act] or any rule adopted by the department; or

(c) fails to meet any applicable federal or state standard for asbestos projects.

(2) Notwithstanding the provisions of any other law, a person who purposely or knowingly violates any provision of [this act] or an adopted rule or order issued pursuant to [this act] is guilty of a misdemeanor.

(3) If the department determines that a violation of [this act] or a rule promulgated pursuant to [this act] has occurred, it may issue an order compelling the person receiving the order to end the violation immediately.

(4) In addition to or instead of the remedies listed in subsections (1) through (3), an accredited person who purposely or knowingly violates [this

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act] or a rule adopted pursuant to [this act] that concerns the conduct of an asbestos project may be assessed a civil penalty by the district court of not more than $1,000 a day for an initial violation and $5,000 a day for each subsequent violation occurring within a 3-year period from the date of the initial violation.

(5) A district court may assess a civil penalty of not more than $25,000 a day upon a person who engages in an asbestos project without valid accreditation or a permit. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

(6) Civil penalties collected under [this act] must be deposited into the resource indemnity trust fund created in 15-38-201.

Section 10. **Coordination instruction.** If [Senate Bill No. 259 (LC 857)] is not passed and approved, [this act] is not void.

Section 11. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 12. **Effective dates.** (1) [Sections 3, 4, 8, and this section] are effective July 1, 1989.

(2) [Sections 1, 2, 5 through 7, and 9] are effective January 1, 1990.

Approved April 20, 1989.

# CHAPTER NO. 582

[SB 331]

AN ACT TO GENERALLY REVISE THE UNIFORM PROBATE CODE AND RELATED LAW; REQUIRING A 120-HOUR SURVIVORSHIP TO COLLECT INSURANCE PROCEEDS; AND AMENDING SECTIONS 40-8-125, 72-1-108, 72-2-104, 72-2-202, 72-2-305, 72-2-516, 72-2-517, 72-2-704, 72-3-122, 72-3-213, 72-3-603, 72-3-607, 72-3-805, 72-3-902, 72-3-917, 72-3-1103, 72-3-1104, 72-5-302 THROUGH 72-5-304, 72-5-325, 72-5-435, 72-5-438, 72-5-501, 72-16-301 THROUGH 72-16-303, 72-16-906, AND 72-26-502, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-8-125, MCA, is amended to read:

**"40-8-125. Effect of final decree.** (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents.

(2) After *the* final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of

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all parental responsibilities for said child and have no rights over such adopted child.

*(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72."*

Section 2. Section 72-1-108, MCA, is amended to read:

**"72-1-108. Evidential rules applicable — evidence as to death or status.** (1) In proceedings under this code the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by the code.

(2) In addition, the following rules relating to determination of death and status are applicable:

(a) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date, and time of death and the identity of the decedent.

(b) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

*(c) In the absence of prima facie evidence of death under subsection (2)(a) or (2)(b), the fact of death may be established by clear and convincing evidence, including circumstantial evidence.*

*(d)* A person *whose death is not established under subsections (2)(a) through (2)(c),* who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier."

Section 3. Section 72-2-104, MCA, is amended to read:

**"72-2-104. Homicide — effect on intestate succession, wills, joint assets, life insurance, and beneficiary designations.** (1) A surviving spouse, heir, or devisee who feloniously and intentionally kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of *the* decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.

(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal

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obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.

(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

*(7) For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103.*"

Section 4. Section 72-2-202, MCA, is amended to read:

"**72-2-202. Share of spouse.** The intestate share of the surviving spouse is:

(1) if there is no surviving issue or if there are surviving issue all of whom are issue of the surviving spouse also, the entire remaining estate;

(2) if there are surviving issue one or more of whom are not issue of the surviving spouse, as follows:

(a) if there is surviving only one child or the issue of one child, one-half of the intestate estate;

(b) if there are surviving *two or more children, the issue of two or more deceased children, or one or more children* and the issue of one or more deceased children, one-third of the intestate estate."

Section 5. Section 72-2-305, MCA, is amended to read:

"**72-2-305. Who may witness — effect of witness by beneficiary.** (1) Any person generally competent to be a witness may act as a witness to a will.

(2) A will is not invalid because the will is signed by an interested witness."

Section 6. Section 72-2-516, MCA, is amended to read:

"**72-2-516. Nonademption of specific devises in certain cases.** *(1)* A specific devisee has the right to the specifically devised property and:

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(a) any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on the property; and

(d) property owned by testator at his death, as a result of foreclosure or obtained in lieu of foreclosure of the security for a specifically devised obligation.

*(2) If specifically devised property is sold by a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, or if a condemnation award or insurance proceeds are paid to a conservator or an agent acting within the authority of a durable power of attorney for a principal who is under a disability, as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if after the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year. The right of the specific devisee under this subsection is reduced by any right he has under subsection (1).*"

Section 7. Section 72-2-517, MCA, is amended to read:

"**72-2-517. Changes in devised securities — distributions prior to death.** (1) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(a) as much of the devised securities as is a part of the estate at time of the testator's death;

(b) any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity, *excluding any securities acquired by exercise of purchase options*;

(c) securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity; and

(d) any additional securities of the entity owned by the testator as a result of a plan of reinvestment.

(2) Distributions prior to death with respect to a specifically devised security not provided for in subsection (1) are not part of the specific devise."

Section 8. Section 72-2-704, MCA, is amended to read:

"**72-2-704. Surviving spouse — allowance — exemptions.** A surviving spouse is entitled to homestead allowance, exempt property, and family allowance whether or not he elects to take an elective share."

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Section 9. Section 72-3-122, MCA, is amended to read:

**"72-3-122. Time limit on probate, testacy, and appointment proceedings — exceptions.** (1) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than 3 years after the decedent's death, except:

(a) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(b) appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed at any time within 3 years after the conservator becomes able to establish the death of the protected person;

(c) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of 12 months from the informal probate or 3 years from the decedent's death; *and*

*(d) if no proceeding concerning the succession or administration of the estate has occurred within 3 years after the decedent's death, a formal testacy proceeding may be commenced at any time thereafter for the sole purpose of establishing a devise of property which the devisee or his successors and assigns possessed in accordance with the will or property which was not possessed or claimed by anyone by virtue of the decedent's title during the 3-year period, and the order of the court must be limited to that property.*

(2) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(3) In cases under (1)(a) or (1)(b) above, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this code which relate to the date of death."

Section 10. Section 72-3-213, MCA, is amended to read:

**"72-3-213. Rules for grant or denial of informal probate.** (1) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under 72-2-302, 72-2-303, or 72-2-306 have been met shall be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

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(2) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (3) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(4) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate which relates to one or more of a known series of testamentary instruments (other than *a will and one or more codicils to the will*), the latest of which does not expressly revoke the earlier, shall be declined."

Section 11. Section 72-3-603, MCA, is amended to read:

**"72-3-603. Notice of appointment to heirs and devisees.** (1) Not later than 30 days after his appointment, every personal representative, except any special administrator, shall give information of his appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate.

(2) *(a)* The information *must*:

*(i)* include the name and address of the personal representative;

*(ii)* indicate that it is being sent to persons who have or may have some interest in the estate being administered;

*(iii)* indicate whether bond has been filed; and

*(iv)* describe the court where papers relating to the estate are on file.

*(b) The information must state that the estate is being administered by the personal representative under the uniform probate code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.*

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(3) The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his appointment, his powers, or other duties.

(4) A personal representative may inform other persons of his appointment by delivery or ordinary first-class mail."

Section 12. Section 72-3-607, MCA, is amended to read:

**"72-3-607. Inventory — appraisal — copy to department of revenue.** (1) Within *the time required for the filing of a United States estate tax return plus any extensions granted by the internal revenue service*, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory, which inventory shall include listing of all property which:

(a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of his death;

(b) the decedent had possessory or dispository rights over at the time of his death or had disposed of for less than its fair market value within 3 years of his death; or

(c) was affected by the decedent's death for the purpose of inheritance or estate taxes.

(2) The inventory shall include a statement of the full and true value of the decedent's interest in every item listed in such inventory. In this connection the personal representative shall appoint one or more qualified and disinterested persons to assist him in ascertaining the fair market value as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

(3) The personal representative shall send a copy of the inventory to interested persons who request it, or he may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value shall be mailed to the department of revenue."

Section 13. Section 72-3-805, MCA, is amended to read:

**"72-3-805. Allowance and disallowance of claims — interest on allowed claims.** (1) As to claims presented in the manner described in 72-3-804 within the time limit prescribed in 72-3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than 60 days after the mailing of the notice of

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disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for 60 days after the time for original presentation of the claim has expired has the effect of a notice of *allowance.*

*(2) After allowing or disallowing a claim, the personal representative may change the allowance or disallowance as provided in this section. The personal representative may change the allowance to a disallowance, in whole or in part, prior to payment, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (1). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (1). After it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.*

*(3)* Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (1). Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

*(4)* A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

*(5)* Unless otherwise provided in any judgment in another court entered against the personal representative, *an* allowed *claim bears* interest at the legal rate for the period commencing 60 days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case *the claim bears* interest in accordance with that provision."

Section 14. Section 72-3-902, MCA, is amended to read:

**"72-3-902. Distribution in kind preferred — method — valuation.** Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

(1) A specific devisee is entitled to distribution of the thing devised to him, and a spouse or child who has selected particular assets of an estate as provided in 72-2-802 shall receive the items selected.

(2) Any homestead or family allowance or devise *of a stated sum of* money may be satisfied in kind, provided:

(a) the person entitled to the payment has not demanded payment in cash;

(b) the property distributed in kind is valued at fair market value as of the date of its distribution; and

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(c) no residuary devisee has requested that the asset in question remain a part of the residue of the estate.

(3) For the purpose of valuation under subsection (2), *any security* regularly traded on *a* recognized *exchange*, if distributed in kind, *is* valued at the price for the last sale of like securities traded on the business day prior to distribution or, if there was no sale on that day, at the median between amounts bid and *asked* at the close of that day. *An asset* consisting of *a sum* owed the decedent or the estate by *a* solvent *debtor* as to which there is no known dispute or defense *is* valued at the sum due with accrued interest or discounted to the date of distribution. For *an asset* which *has no* readily ascertainable *value*, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of *any asset* as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the *asset* may have been previously appraised.

(4) The residuary estate shall be distributed in *any equitable manner.*"

Section 15. Section 72-3-917, MCA, is amended to read:

"**72-3-917. Distribution to person under disability.** *(1)* A personal representative may discharge his obligation to distribute to any person under legal disability by distributing *in a manner expressly provided in the will.*

*(2) Unless contrary to an express provision in the will, the personal representative may discharge his obligation to distribute to a minor or person under other disability as authorized by 72-5-501 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.*

*(3) (a) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:*

*(i) an attorney-in-fact who has authority under a power of attorney to receive property for that person; or*

*(ii) the spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding $10,000 a year or property not exceeding $10,000 in value, unless the court authorizes a larger amount or greater value.*

*(b) Any person receiving money or property for the disabled person is obligated to apply the money or property to the support of that person, but may not pay himself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection (3).*"

Section 16. Section 72-3-1103, MCA, is amended to read:

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**"72-3-1103. Summary procedure for disbursement and distribution.** If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to *the* creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in 72-3-1104."

Section 17. Section 72-3-1104, MCA, is amended to read:

**"72-3-1104. Closing by sworn statement of personal representative — termination of appointment.** (1) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of 72-3-1103 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(a) to the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;

(b) the personal representative has fully administered the estate by payment of inheritance taxes and by disbursing and distributing it to the persons entitled thereto; and

(c) the personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom he is aware whose claims are neither paid nor barred and has furnished a full account in writing of his administration to the distributees whose interests are affected.

(2) If no actions or proceedings involving the personal representative are pending in the court 1 year after the closing statement is filed, the appointment of the personal representative terminates.

(3) A closing statement filed under this section has the same effect as one filed under 72-3-1004."

Section 18. Section 72-5-302, MCA, is amended to read:

**"72-5-302. Testamentary appointment of guardian for incapacitated person — when effective — priorities.** (1) The parent of an *unmarried* incapacitated person may *appoint* by will *or other writing signed by the parent and attested by at least two witnesses* a guardian of the incapacitated person. *If both parents are dead or the surviving parent is adjudged incapacitated, a parental* appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the incapacitated person and to the person having care *of the person* or to *the* nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, *or, in the case*

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*of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304.* If both parents are dead, an effective appointment by the parent who died later has priority.

(2) The spouse of a married incapacitated person may *appoint* by will *or other writing signed by the spouse and attested by at least two witnesses* a guardian of the incapacitated person. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the incapacitated person and to the person having care *of the incapacitated person* or to *the* nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated *or, in the case of nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court, as provided by 72-5-304.* An effective appointment by a spouse has priority over an appointment by a parent."

Section 19. Section 72-5-303, MCA, is amended to read:

**"72-5-303. Recognition of appointment of guardian by foreign will.** *An* appointment effected by filing *the guardian's* acceptance under a will probated *in the state of the decedent's* domicile *is effective in this state.*"

Section 20. Section 72-5-304, MCA, is amended to read:

**"72-5-304. Objection by alleged incapacitated person to testamentary appointment.** *Upon* the filing *in* the court in which the will was probated *or, in the case of a nontestamentary nominating instrument, in the court at the place where the incapacitated person resides or is present,* of written objection to the appointment by the *incapacitated* person for whom a *parental or spousal* appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the *parental or spousal* nominee or any other suitable person upon an adjudication of incapacity in proceedings under *72-5-305 through 72-5-325.*"

Section 21. Section 72-5-325, MCA, is amended to read:

**"72-5-325. Petition for removal or resignation of guardian — termination of incapacity.** (1) On petition of the ward or any person interested in *the ward's* welfare, the court, *after hearing,* may remove a guardian if in the best interests of the ward. On petition of the guardian, the court, *after hearing,* may accept *a* resignation.

(2) An order adjudicating incapacity may specify a minimum period, not exceeding *6 months,* during which *a* petition for an adjudication that the ward is no longer incapacitated may *not* be filed without special leave. Subject to *that* restriction, the ward or any person interested in *the* welfare *of the ward* may petition for an order that *the ward* is no longer incapacitated and for *termination* of the *guardianship.* A request for *an* order may *also* be made *informally* to the court, and any person who knowingly interferes with transmission of *the* request may be adjudged guilty of contempt of court.

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(3) *Upon removal, resignation, or death of the* guardian *or if the* guardian *is determined to be incapacitated,* the court may *appoint a successor* guardian and *make any other appropriate order. Before appointing a successor guardian or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian.*"

Section 22. Section 72-5-438, MCA, is amended to read:

"**72-5-438. Accounts — final and intermediate.** (1) *Each* conservator *shall* account to the court for administration of the trust *not less than* annually, *unless the court directs otherwise,* upon resignation or removal, *and at other times as the court may direct.* On termination of the protected person's minority or disability, a conservator *shall* account to the court or to the *formerly* protected person or *the successors of that person.*

(2) Subject to appeal or vacation within the time permitted, an order, *after* notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection *with the hearing*; and an order, *following* notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or *the protected person's* successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate, to be made in any manner the court *specifies.*"

Section 23. Section 72-5-435, MCA, is amended to read:

"**72-5-435. Persons dealing with conservator — protection.** (1) A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in 72-5-421 is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in 72-5-430 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator.

(2) The protection expressed *in this section* extends to *any* procedural irregularity or jurisdictional defect *occurring* in proceedings leading to the issuance of letters *and is not a substitution for protection provided by comparable provisions of the law relating to commercial transactions or laws simplifying transfers of securities by fiduciaries.*

(3) The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries."

Section 24. Section 72-5-501, MCA, is amended to read:

"**72-5-501. When power of attorney not affected by disability.** (1) A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact or agent in writing and the writing

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contains the words, "This power of attorney shall not be affected by subsequent disability or incapacity of the principal or lapse of time" or "This power of attorney shall become effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. All acts done by the attorney-in-fact pursuant to *a durable* power *of attorney* during any period of disability or incapacity *of* the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were alive, competent, and not disabled. *Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.*

(2) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, is accountable to the conservator as well as the principal. The conservator has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated. A principal may nominate, by a durable power of attorney, the conservator of his estate or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are *later* commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification."

Section 25. Section 72-16-301, MCA, is amended to read:

**"72-16-301. Taxable transfers generally — contemplation of death.** *(1)* A tax shall be and is hereby imposed upon any transfer of property, real, personal, or mixed, or any interest therein or income therefrom in trust or otherwise to any person, association, or corporation in the following cases, except as provided *in this section*:

*(a)* when the transfer is by will or by intestate laws of this state from any person dying possessed of the property while a resident of the state;

*(b)* when a transfer is by will or intestate law of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death; *or*

*(c)* when the transfer is of property made by a resident or by a nonresident when such nonresident's property is within the state or within its jurisdiction by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor or intended to take effect in possession or enjoyment at or after such death.

*(2) No* transfer made *before the 3-year period ending on the date of the decedent's* death shall be *considered* to have been made in contemplation of death.

*(3) Every transfer during the* 3-year period *ending on the date of the decedent's death must be considered to have been made in contemplation of death, except:*

*(a) no transfer shown to be a bona fide sale for an adequate and full consideration in money or money's worth may be considered to be a gift made in contemplation of death;*

*(b) if the transfer was a gift to a donee made during the calendar year and if the decedent was not required by section 6019 of the internal revenue code to file any gift tax return for the year with respect to the donee, the transfer may not be considered to be a gift made in contemplation of death.*

*(4) Subsection (3)(b) does not apply to any transfer with respect to a life insurance policy."*

Section 26. Section 72-16-302, MCA, is amended to read:

**"72-16-302. Transfer under power of appointment.** *(1) To the extent of any property with respect to which the decedent has at the time of his death a general* power of appointment, such *property* shall be *considered to have been transferred in* a transfer taxable under the provisions of parts 1 through 8, *whether or not the decedent exercised the power of appointment.*

*(2) The term "general power of appointment" means a power that is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent may not be considered a general power of appointment."*

Section 27. Section 72-16-303, MCA, is amended to read:

**"72-16-303. Joint estates — transfer by right of survivorship taxable.** (1) Whenever any property is held by two or more persons in joint tenancy *with right of survivorship*, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer.

(2) The tax is *on the full value of the property held as joint tenants with right of survivorship, except a part of the property as may be shown to have originally belonged to the survivor or survivors and never to have been received or acquired by the latter from the decedent for less than adequate and full consideration in money or money's worth. When the property or any part of the property, or part of the consideration with which the property was acquired, is shown to have been at any time acquired by the other person from the decedent for less than an adequate and full consideration in money or money's worth, only the part of the value of the property as is proportionate to the consideration furnished by the other person may be excepted. When any property has been acquired by gift, bequest, devise, or inheritance as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, the tax is on the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship."*

Section 28. Section 72-16-906, MCA, is amended to read:

**"72-16-906. Required filings.** The personal representative of the estate of any decedent whose estate is subject to the payment of a United

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States estate tax shall file *a duplicate* of the United States estate tax *return* with the department of revenue. He shall also file with the department a certificate or other evidence from the internal revenue service showing the amount of the United States estate tax as computed by *the internal revenue service.*"

Section 29. Section 72-26-502, MCA, is amended to read:

**"72-26-502. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who has attained the age of *21* years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means district court.

(6) "Custodial property" means:

(a) any interest in property transferred to a custodian under this chapter; and

(b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under 72-26-603 or a successor or substitute custodian designated under 72-26-801.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of *21* years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

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(15) "Transfer" means a transaction that creates custodial property under 72-26-603.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation, or other legal entity authorized to exercise general trust powers."

Section 30. **Requirement that beneficiary survive insured by 120 hours.** A beneficiary in a policy of life or accident insurance who does not survive the insured by 120 hours is treated as if he had predeceased the insured unless the policy of insurance contains some language dealing explicitly with simultaneous deaths or deaths in a common disaster or requiring that the beneficiary survive the insured for a stated period in order to receive the proceeds of the policy.

Section 31. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 32. **Codification instruction.** [Section 30] is intended to be codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [section 30].

Approved April 20, 1989.

# CHAPTER NO. 583

[SB 429]

AN ACT TO ALLOW A STAY OF THE PAYMENT OF FINAL WAGES DUE AN EMPLOYEE WHO HAS COMMITTED THEFT OF HIS EMPLOYER'S PROPERTY; AND AMENDING SECTION 39-3-205, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-3-205, MCA, is amended to read:

**"39-3-205. Payment of wages when employee separated from employment prior to payday — exception.** (1) Except as provided in *subsections* (2) *and (3), when an* employee is separated from the employ of any employer, all the unpaid wages of *the* employee *are* due and payable within 3 days, except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee. However, *if* an employer's payroll checks originate at an office outside the state, the time provided *in this section* for payment of wages *must* be extended for 3 additional days.

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(2) *Except as provided in subsection (3), if* an employee is separated for cause from employment by the employer, all the unpaid wages of the employee *are* due and payable immediately upon *the* separation.

*(3) If an employee is separated from employment by the employer because the employee has committed the offense of theft of the employer's funds or property and criminal charges have been filed by the county attorney against the employee, the employer may apply to the district court for an order temporarily staying the payment of any unpaid wages due the employee and staying the running of the penalty provided for in 39-3-206 pending the final resolution of criminal proceedings against the employee. If the employee pleads or is found guilty of the criminal offense, the district court may order any wages due and owing to the employee by the employer to be offset against the amount the employee illegally obtained from the employer. If the employee is found not guilty of the criminal offense, the district court may order the employer to pay the employee any wages due, including interest."*

Approved April 20, 1989.

# CHAPTER NO. 584

[SB 432]

AN ACT MAKING TECHNICAL CHANGES TO THE IRRIGATION DISTRICT LAWS; MODIFYING THE REQUIREMENTS FOR COMMISSIONERS OF IRRIGATION DISTRICTS AND THE PROCESS FOR APPOINTING A COMMISSIONER TO FILL A VACANCY ON THE BOARD OF COMMISSIONERS; CLARIFYING THE QUALIFICATIONS OF ELECTORS; REVISING VOTING PROCEDURES; ALLOWING A COUNTY TREASURER TO RECEIVE ASSISTANCE FROM AN IRRIGATION DISTRICT EMPLOYEE OR COMMISSIONER FOR CERTAIN DISTRICT-RELATED TAX FUNCTIONS; DEFINING IRRIGABLE LAND; AND AMENDING SECTIONS 85-7-1501, 85-7-1703, 85-7-1710, AND 85-7-2136, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-7-1501, MCA, is amended to read:

**"85-7-1501. Qualifications of commissioners and term of office.** (1) *A* person may *not* be a commissioner unless he is an owner of *irrigable* land within the *division of the* district *he is to represent* and is a resident of the county in which the division of the district or some portion *of the division* is situated.

(2) The commissioners appointed shall hold their respective offices until their respective successors are elected and qualified. Each of the commissioners shall qualify in the same manner as justices of the peace. The bond for a commissioner *must* be approved by the district court or judge *of the district court* and filed in the office of the clerk of the court."

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Section 2. Section 85-7-1703, MCA, is amended to read:

**"85-7-1703. Vacancies among commissioners.** In case of a vacancy in the board of commissioners, from any cause, *the* vacancy *must* be filled until the next regular or special election by appointment by the *board. The remaining commissioners shall constitute a quorum for the purpose of filling any vacancy. If a vacancy exists for every position on the board, the* judge of the district court of the county in which the division or major portion *of the division* is situated *shall make the appointments.* The appointee *must* be an owner of *irrigable* land within the *division of the* district *he represents and must* be a resident of the county in which the division of the district or some portion of the division is situated. *A commissioner appointed under this section* shall hold office until his successor is elected and qualified."

Section 3. Section 85-7-1710, MCA, is amended to read:

**"85-7-1710. Qualification of electors and nature of voting rights.** (1) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to *irrigable* lands within the district, herein designated "electors", are entitled to vote:

(a) all individuals having the qualifications of electors under the constitution and general election laws of the state, except that no registration of electors may be required;

(b) guardians, executors, administrators, and trustees;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this part, each elector is permitted to cast one vote for each 40 acres of irrigable land or major fraction thereof owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as hereinafter provided for), election precincts, or district divisions, but any elector owning any less than 40 acres of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district *must* be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners, and one vote only for each 40 acres of irrigable land or major fraction thereof may be cast by the voting co-owner or agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation or co-owners, the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of his authority, executed and acknowledged by the proper officers of the corporation, by the co-owners, or by the owner of land under contract of sale, as the case may be, and thereupon the agent or co-owner or purchaser, as the case may be, is an elector within the meaning of this part.

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Whenever the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district or whenever the majority of the district board adopts a resolution allowing it, each elector is permitted to cast one vote for each acre of irrigable land or major fraction *of an acre of irrigable land* owned by the elector within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote.

*(4) The board of commissioners shall choose one of the following methods of balloting:*

*(a)* 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10*; or*

*(b) the elector shall submit a ballot that includes the number of acres owned and the number of votes being cast.*"

Section 4. Section 85-7-2136, MCA, is amended to read:

"**85-7-2136. Collection of taxes or assessment.** (1) On or before the third Monday in August of each year the board of commissioners shall furnish the agent of the department of revenue in each county in which any of the lands of the district are situate a correct list of all the district lands in *the* county, together with the amount of the total taxes or assessments against *the* lands for district purposes. The agent of the department of revenue in each county shall immediately thereafter, and prior to the delivery of the assessment book to the county treasurer, cause *the* assessment roll to be entered in the assessment book of *the* county for each year.

(2) It *is* the duty of the county treasurer of each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes and assessments levied by *the* district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. *The* treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

*(3) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.*

*(4)* When any real estate on account of which *the* district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of *the* district tax or assessment, together with the penalty and interest to date of payment on such installment. *However, the* payment *may* not be *considered* a redemption of *the*

property from *the* tax sale but *must* be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt *must* issue showing exactly what assessments have been paid and *must* show that no other tax on *the* real estate has been received by *the* treasurer. *The* county treasurer *may* not collect or receive or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of *the* irrigation district has been levied unless the assessment levied for irrigation district purposes *is* paid as herein permitted and the receipt *for the payment* presented to the county treasurer at the time *the* taxes are paid, or paid at the same time."

Section 5. **Definition of irrigable land.** As used in this chapter, "irrigable land" means:

(1) land that can receive irrigation water and is classified as irrigable by the district or the United States government; or

(2) land decreed as taxable acreage under 85-7-1841 through 85-7-1845.

Section 6. **Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 85, chapter 7, and the provisions of Title 85, chapter 7, apply to [section 5].

Approved April 20, 1989.

# CHAPTER NO. 585

[HB 742]

AN ACT PROVIDING FLEXIBILITY IN ESTABLISHING GENERAL ASSISTANCE BY REPLACING BENEFIT SCHEDULES WITH AMOUNTS DETERMINED BY RULE; AMENDING SECTIONS 53-3-205, 53-3-206, AND 53-3-311, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-3-205, MCA, is amended to read:

**"53-3-205. Eligibility for general relief.** (1) A person or persons constituting a household may receive general relief assistance for basic necessities if the household is determined to be eligible under the provisions of this section and is in need of such assistance as a result of their infirmity, misfortune, or indigency.

(2) A household is eligible for general relief if the household income, exclusive of the first $50 earned each month by each household member, does not exceed *the amount established by the department by rule. The department shall establish the amount, taking into account the size of the household and the estimated number of eligible households. The amount must be based on a percentage of the federal poverty index. The percentage is established in the state general appropriations act.*

(3) Able-bodied persons without dependent minor children living in the household are not eligible for nonmedical general relief assistance, except as provided in 53-3-209.

(4) (a) When the household's income exceeds the monthly income standard for a household of that size because of receipt of lump-sum income, the household will be ineligible for general relief for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard for a household of that size. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump sum was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of a lump sum does not preclude eligibility for general relief medical assistance.

(5) All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

(6) Prospective income that is reasonably certain to be received by the household during an eligibility period must be considered when determining eligibility.

(7) The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(a) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(b) a motor vehicle that has no more than $1,500 in equity value;

(c) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(d) tools of a trade that are essential to the current or future employment of a household member.

(8) A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

(9) A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

(10) For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

(11) Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination.

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(12) An alien determined to be illegally within the United States is not eligible for general relief."

Section 2. Section 53-3-206, MCA, is amended to read:

**"53-3-206. Eligibility for general relief medical assistance.** (1) In order to be considered for eligibility for general relief medical assistance, a person must be found to have a serious medical condition.

(2) Eligibility for general relief medical assistance must be determined as provided in this section and 53-3-205. A person with a serious medical condition must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

(3) All persons who reside in the same residence and are legally related to or responsible for each other are considered to be one household for purposes of determining general relief medical assistance.

(4) All individual or household resources must be used to offset medical obligations except those excluded in 53-3-205(7).

(5) To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in 53-3-205(2) is eligible for such medical assistance.

(6) In a county with state-assumed welfare services:

(a) covered medical services must be provided at no cost to the person residing in a household if the average household monthly income that is reasonably certain to be received in a 12-month period beginning with the month the medical service was provided does not exceed the amount in 53-3-205(2);

(b) a person is not eligible for medical services if the household in which he resides has an average monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided in excess of *the amount established by the department by rule. The department shall establish the amount, taking into account the size of the household and the estimated number of eligible households. The amount must be 150% of the amount established in 53-3-205(2).*

(c) if the average household monthly income reasonably certain to be received in a 12-month period beginning with the month the medical service was provided is between the amount in 53-3-205(2) and the monthly income level set forth in subsection (b), a household must first incur covered medical costs equal to the difference between its average monthly income and the monthly income standard in 53-3-205(2) before medical assistance is provided."

Section 3. Section 53-3-311, MCA, is amended to read:

**"53-3-311. Amount of general relief for basic necessities.** (1) In a county without state-assumed welfare services, the amounts of general

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relief for basic necessities must be determined and adopted at the discretion of the county welfare board.

(2) In a county with state-assumed welfare services, the amount of general relief for basic necessities available to an eligible household is the amount *determined* for the same size household *pursuant to* 53-3-205(2), less income and resources not excluded in 53-3-205(7)."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective dates.** (1) [Section 4 and this section] are effective on passage and approval.

(2) [Sections 1 through 3] are effective July 1, 1989.

Approved April 20, 1989.

# CHAPTER NO. 586

[SB 167]

AN ACT REQUIRING THE WATER COURTS TO REOPEN AND REVIEW ALL PRELIMINARY DECREES AND FINAL DECREES ACCORDING TO CERTAIN PROCEDURES AND LIMITATIONS; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Reopening and review of decrees.** (1) The water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees that have been issued by the water courts but have not been noticed throughout the water divisions.

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if he was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

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(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to his claim and, after further reasonable notice to the claimant, the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence before him, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions of Title 85, chapter 2, part 2, apply to [section 1].

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Section 3. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-209, to all preliminary decrees and final decrees that have been issued by the Montana water courts prior to [the effective date of this act].

Section 5. **Effective date.** [This act] is effective on the latest date on which any of the following occur:

(1) passage and approval of [this act], [Senate Bill No. 169 (LC 683)] or [Senate Bill No. 166 (LC 684)]; or

(2) a final determination of failure to receive passage and approval of [Senate Bill No. 169 (LC 683)] or [Senate Bill No. 166 (LC 684)].

Approved April 20, 1989.

# CHAPTER NO. 587

[SB 286]

AN ACT AMENDING ARTICLE IV OF THE CONSTITUTION OF THE STATE OF MONTANA BY REQUIRING THAT A VALID ELECTION BE HELD ON PROPERLY QUALIFIED BALLOT ISSUES; AND PROVIDING THAT THE ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Article IV of The Constitution of the State of Montana is amended by adding a new section 7 that reads:

Section 7. **Ballot issues — challenges — elections.** (1) An initiative or referendum that qualifies for the ballot under Article III or Article XIV shall be submitted to the qualified electors as provided in the Article under which the initiative or referendum qualified unless a new election is held pursuant to this section.

(2) A preelection challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection challenge to the manner in which the election was conducted shall be given priority by the courts.

(3) If the election on an initiative or referendum properly qualifying for the ballot is declared invalid because the election was improperly conducted, the secretary of state shall submit the issue to the qualified electors at the next regularly scheduled statewide election unless the legislature orders a special election.

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Section 2. **Submission to electorate.** The amendment set forth in section 1 shall be submitted to the qualified electors of Montana at the general election to be held in November 1990 by printing on the ballot the full title of this act and the following:

☐ FOR requiring a valid and timely election on properly qualified initiatives and referendums.

☐ AGAINST requiring a valid and timely election on properly qualified initiatives and referendums.

Approved April 17, 1989.

## CHAPTER NO. 588

[SB 302]

AN ACT TO PROVIDE FINANCIAL SUPPORT FOR THE MONTANA UNIVERSITY SYSTEM WITH A STATEWIDE MILL LEVY AS PROVIDED FOR IN REFERENDUM MEASURE NO. 106; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Tax levy for university system.** There is levied upon the taxable value of all real and personal property subject to taxation in the state of Montana 6 mills or so much thereof as is necessary to raise the amount appropriated by the legislature from the state special revenue fund for the support, maintenance, and improvement of the Montana university system, as provided in referendum measure No. 106 passed by vote of the people at the general election held November 8, 1988. The funds raised from the levy must be deposited in the state special revenue fund.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, and the provisions of Title 15, chapter 10, apply to [section 1].

Section 3. **Termination.** [This act] terminates January 1, 1999.

Approved April 20, 1989.

## CHAPTER NO. 589

[SB 368]

AN ACT TO EXTEND THE EXEMPTION OF CERTAIN STRIPPER WELLS FROM SEVERANCE TAXES; AMENDING SECTION 15-36-101; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-36-101, MCA, is amended to read:

**"15-36-101. Definitions and rate of tax.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or

crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, except as provided in 15-36-121, each year when engaged in or carrying on any such business in this state pay to the department of revenue for the exclusive use and benefit of the state of Montana a severance tax computed at the following rates:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), 5% of the total gross value of all the petroleum and other mineral or crude oil produced by *the* person from each lease or unit; but in determining the amount of *severance* tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by *the* person during *the* year in connection with his operations in prospecting for, developing, and producing *the* petroleum or crude or mineral oil;

(b) 2.65% of the total gross value of natural gas produced from each lease or unit; but in determining the amount of *severance* tax there shall be excluded from consideration all gas produced and used by *the* person during *the* year in connection with his operations in prospecting for, developing, and producing *the* gas or petroleum or crude or mineral oil; and there shall also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) 2.5% of the total gross value of the incremental petroleum and other mineral or crude oil produced from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. *The* approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For the purpose of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

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(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; *or*

(J) any other method approved by the department as a tertiary recovery method.

(d) 3% of the total gross value of all the petroleum and other mineral or crude oil, after the first 5 barrels, produced by a stripper well, as defined in 15-36-121, that produces more than 5 barrels a day during the period beginning April 1, *1989*, and ending March 31, *1991*.

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay *the* severance tax, nor may work done or the drilling of *a* well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing *them* be considered to be the engaging in or carrying on of *the* business. If, in the doing of any work, in the drilling of any oil well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by *the* person for carrying on *the* operation is produced sufficient in quantity to justify the marketing of the *petroleum or other mineral or crude oil, the* work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of *the* business *of producing petroleum or other mineral or crude oil* within this state within the meaning of this section.

(4) Every person required to pay *the severance* tax *under this section* shall pay the *tax* in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of *the* extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements

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under *the* lease or leases or division of proceeds orders or other contracts. **(Subsection (1)(d) terminates on occurrence of contingency—sec. 7, Ch. 656, L. 1987.)"**

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date — contingent retroactive applicability.** [This act] is effective on passage and approval and if approved after April 1, 1989, applies retroactively, within the meaning of 1-2-109, to petroleum or other mineral or crude oil produced on or after April 1, 1989.

Approved April 20, 1989.

## CHAPTER NO. 590

[SB 446]

AN ACT AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ALLOW MEMBERS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION TO HUNT AND FISH OFF RESERVATION ON OPEN AND UNCLAIMED LANDS WITHOUT STATE LICENSES, PERMITS, OR STAMPS; AUTHORIZING THE ISSUING OF HUNTING AND FISHING LICENSES, PERMITS, AND STAMPS JOINTLY WITH THE CONFEDERATED SALISH AND KOOTENAI TRIBES; AUTHORIZING REVENUES FROM THE SALE OF JOINT LICENSES, PERMITS, AND STAMPS TO BE REMITTED TO THE TRIBAL COUNCIL; TRANSFERRING TO THE TRIBAL COUNCIL FINES AND RESTITUTION COLLECTED FOR CERTAIN FISH AND WILDLIFE VIOLATIONS; GRANTING RESPONSIBILITY FOR REDRESS OF FISH AND GAME VIOLATIONS TO STATE OR TRIBAL COURTS; PROVIDING FOR PUBLIC MEETINGS AND COMMENT PRIOR TO CONCLUSION OF A NEGOTIATED AGREEMENT; AND AMENDING SECTION 87-1-228, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 87-1-228, MCA, is amended to read:

**"87-1-228. Agreement with Indians concerning hunting and fishing — Indian treaty of 1855.** (1) Whereas, by treaty of July 16, 1855, between the United States of America and the confederated tribes of the Flathead, Kootenai, and Upper Pend Oreille Indians, the *tribes have certain rights* to fish and hunt; and whereas, it appears to be to the common advantage of the state and Indian tribes *to cooperate in matters involving hunting and fishing. Therefore,* the department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of:

*(a) authorizing individuals to serve on a state-tribal cooperative board to develop hunting and fishing regulations and reimbursing those individuals' expenses pursuant to 2-18-501 through 2-18-503;*

*(b)* doing what in its judgment is necessary by way of granting to tribal Indians state permits to hunt and fish *off reservation on open and unclaimed lands*, to be issued without charge to *the* Indians *or allowing Indians to hunt without licenses, permits, or stamps*;

*(c) issuing jointly with the council hunting and fishing licenses, permits, and stamps under terms established by mutual agreement and recognized as valid for hunting and fishing throughout the state;*

*(d) authorizing all revenues collected from sale of joint licenses, permits, and stamps to be remitted to the council for the purpose of a fish and wildlife program;*

*(e) transferring to the council an amount equal to all fines and restitution collected in state court for fish and wildlife violations within reservation boundaries for use in a fish and wildlife program;*

(f) policing Indian *and other* lands for the protection of fish and game *and providing responsibility for redress of fish and game violations to state or tribal courts*; and

(g) in general carrying out the purposes of this section.

*(2)* Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

*(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford an opportunity to comment on the contents of the agreement.*"

Approved April 20, 1989.

# CHAPTER NO. 591

[SB 470]

AN ACT AUTHORIZING A THIRD-CLASS ELEMENTARY SCHOOL DISTRICT TO REDUCE THE NUMBER OF TRUSTEE POSITIONS FOR THE DISTRICT FROM FIVE TO THREE; AND AMENDING SECTION 20-3-341, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-3-341, MCA, is amended to read:

"**20-3-341. Number of trustee positions in elementary districts.** The number of trustee positions in each elementary district shall vary according to the district's classification, as established by 20-6-201:

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(1) There *must* be seven trustee positions in a first-class elementary district.

(2) There *must* be five trustee positions in a second-class elementary district.

(3) There *must* be three trustee positions in a third-class elementary district; however, upon *a* majority vote of the board of trustees, the number may be increased to five trustee positions at the next trustee election, provided that notice of *the* action of the board of trustees *is* published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of *the* trustee election. *The board of trustees may reduce the number of trustee positions from five to three upon receiving a petition for that purpose from at least ten qualified electors of the district.*"

Section 2. **Transition.** If the number of trustee positions in a third-class elementary district is decreased from five to three in accordance with the provisions of 20-3-341, one position is eliminated at the time of the first subsequent school election when two trustee positions would have been filled and one position is eliminated at the next school election when two trustee positions would have been filled.

Approved April 20, 1989.

# CHAPTER NO. 592

[HB 26]

AN ACT TO INCLUDE THE UNITS OF THE MONTANA UNIVERSITY SYSTEM AND THE VOCATIONAL-TECHNICAL CENTERS UNDER THE UNIFORM STATE CENTRAL PAYROLL SYSTEM; TO PROVIDE AN APPROPRIATION; AMENDING SECTION 2-18-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

## STATEMENT OF INTENT

This bill requires the state auditor to provide for the inclusion of the units of the university system and the vocational-technical centers into the state central payroll system.

The legislature recognizes the need to include the five vocational-technical centers under the central payroll system by July 1, 1989, when the vocational-technical center employees become employees of the board of regents.

The legislature further recognizes the complexity and enormity of the task of including all units of the Montana university system under the central payroll system. Therefore, the legislature intends that the information services division of the department of administration, in consultation with the state auditor and under the direction of the office of budget and program planning, conduct a study to be performed and finalized by November

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1, 1989. The purpose of the study is to determine the necessary modifications and costs required for the university system to be included under a uniform state central payroll, personnel, and position control system. It is expected that the state auditor and the information services division of the department of administration work closely with the board of regents and each unit of the Montana university system to ensure that a systematic implementation of each unit on the uniform state central payroll, personnel, and position control system as approved by the office of budget and program planning be completed no later than January 1, 1991.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-401, MCA, is amended to read:

**"2-18-401. Central payroll system — state auditor to provide for inclusion of agencies.** The state auditor shall install and operate a uniform state central payroll system for all state agencies, *including units of the Montana university system and the vocational-technical centers.* The auditor may provide for the orderly inclusion of state agencies into such system and may make exceptions from the operation thereof for such periods as he determines necessary."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Appropriation.** There is appropriated from the general fund in House Bill No. 100, The General Appropriations Act, $625,000 to the department of administration and $25,000 to the state auditor to conduct the study and provide for the implementation of each university unit on the uniform state central payroll, personnel, and position control system.

Approved April 20, 1989.

## CHAPTER NO. 593

[HB 420]

AN ACT TO EXTEND THE TAX INCENTIVE FOR THE PRODUCTION OF ALCOHOL THAT IS BLENDED OR IS TO BE BLENDED AS GASOHOL; AMENDING SECTION 15-70-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-70-522, MCA, is amended to read:

**"15-70-522. Tax incentive for production of alcohol.** (1) (a) Provided the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

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(i) was blended with gasoline for sale as gasohol in Montana; or

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol.

(b) Payment shall be made by the department of revenue out of the amount collected under 15-70-204.

(2) Except as provided in subsections (3) through (5), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is:

(a) beginning July 1, 1983, 70 cents per gallon;

(b) beginning April 1, 1985, 50 cents per gallon;

(c) beginning April 1, 1987, 30 cents per gallon; and

(d) beginning *July* 1, *1993*, and thereafter, there is no tax incentive.

(3) The incentive schedule provided for in subsection (2) shall be modified in response to market conditions as follows:

(a) If for any 2 consecutive calendar quarters ending on or before September 30, 1984, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be 50 cents per gallon, effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 8% or more but less than 11% of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(b) If for any 2 consecutive calendar quarters ending on or before September 30, 1986, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be 30 cents per gallon effective beginning the second calendar quarter after the 2 consecutive calendar quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 11% or more but less than 18% of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(c) If for any 2 consecutive calendar quarters ending on or before September 30, 1988, the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprise 18% or more of the total gallons of nonaviation gasoline and gasohol sold in Montana, the tax incentive for alcohol shall be eliminated effective beginning the second calendar quarter after the 2 consecutive quarters during which the gallons of gasohol sold or that have received the benefit of the tax incentive during those quarters comprised 18% or more of the total gallons of nonaviation gasoline and gasohol sold in Montana.

(d) Each quarter, the department shall compute the share of the total nonaviation gasoline and gasohol market that is represented by gasohol,

according to the information contained in gasoline distributors' returns and the applications for payment of the alcohol production tax incentive. Alcohol that is exported from Montana and eligible for the tax incentive must be included in the computations.

(4) Regardless of the alcohol tax incentive provided in subsection (2) or (3), the total payments made for the incentive under this part may not exceed *$1,250,000* in any consecutive 12-month period beginning April 1, 1985.

(5) No alcohol distributor may receive tax incentive payments under subsection (2) that exceed $1,000,000 in any consecutive 12-month period beginning April 1, 1985, except as follows. If total tax incentive payments to all eligible alcohol distributors in any consecutive 12-month period beginning April 1, 1985, do not reach the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4), an alcohol distributor who has received the maximum payment of $1,000,000 as herein provided may receive additional tax incentive payments subject to the percentage of production maximums in subsection (3) or the maximum dollar amount in subsection (4)."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Section 4. **Contingent retroactive applicability.** If [this act] is passed and approved after April 1, 1989, the provisions of [this act] apply retroactively, within the meaning of 1-2-109, to April 1, 1989.

Approved April 20, 1989.

# CHAPTER NO. 594

[HB 552]

AN ACT TO PROVIDE FOR LICENSING OF UNDERGROUND STORAGE TANK INSTALLERS; TO PROVIDE FOR PERMITTING OF INSTALLATIONS AND CLOSURES OF UNDERGROUND STORAGE TANKS; TO PROVIDE FOR INSPECTIONS DURING TANK INSTALLATIONS OR CLOSURES; TO AUTHORIZE FEES FOR LICENSES, PERMITS, AND INSPECTIONS; TO CREATE AN UNDERGROUND STORAGE TANK LICENSE AND PERMIT ACCOUNT; TO LOAN $50,000 FROM THE GENERAL FUND TO THE ACCOUNT; TO APPROPRIATE $50,000 FROM THE ACCOUNT TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR THE LICENSING, PERMITTING, AND INSPECTION PROGRAM; TO PROVIDE AN EXEMPTION FROM THE SUNRISE AUDIT REQUIREMENT; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

It is the intent of the legislature that the department of health and environmental sciences adopt rules necessary to govern the installation and closure of underground storage tanks, including rules governing:

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(1) permits for installations and closures;

(2) licenses and requirements for tank installers;

(3) inspections and inspectors;

(4) fees for licenses, permits, and inspections; and

(5) distribution of funds to local governments.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 18] may be cited as the "Montana Underground Storage Tank Installer Licensing and Permitting Act".

Section 2. **Findings and purpose.** (1) Leaking underground storage tanks have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation or closure requires specialized knowledge, training, and experience.

(2) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tanks; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to assess fees to support state and local administration of permitting, licensing, and inspection activities.

Section 3. **Definitions.** As used in [sections 1 through 18], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) (a) "Installation" or "to install" means the placement of an underground storage tank, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems.

(b) The terms do not include:

(i) the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank;

(ii) the installation of a leak detection device that is external to and not attached to the underground storage tank; or

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(iii) the installation and maintenance of a cathodic protection system.

(5) "Installer" means an individual who is engaged in the business of installation or closure of underground storage tanks.

(6) "License" means a license issued by the department under [section 6] to conduct the installation or closure of underground storage tanks.

(7) "Licensed installer" means an individual who holds a valid underground storage tank installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank.

(9) "Owner" means a person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in 75-10-403.

(12) "Underground storage tank" means an underground storage tank as defined in 75-10-403.

Section 4. **Rulemaking authority.** The department may adopt rules governing the installation and closure of underground storage tanks. Rules may include but are not limited to the following:

(1) the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage tanks;

(2) the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for underground storage tank installers;

(3) the requirements for examination and training of underground storage tank installers;

(4) the requirements for qualifications of inspectors, use of inspectors, and methods for conducting an inspection;

(5) a schedule of fees for obtaining licenses and license renewals by underground storage tank installers;

(6) a schedule of fees for the review of applications for underground storage tank permits;

(7) a schedule of fees for inspection of installations or closures; and

(8) the mechanism for remittance of inspection or permitting fees to local governments.

Section 5. **Permits — requirement for licensed installer.** (1) An owner or operator of an underground storage tank may not install or close,

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or cause to be installed or closed, an underground storage tank without a permit issued by the department as provided in [section 8].

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank unless the installation or closure is:

(a) inspected by a department inspector or a designated local inspector as provided in [section 9]; or

(b) exempt from the requirement for a licensed installer, as provided in [section 10].

Section 6. **Licensing — interim licenses — regular licenses.** (1) An installer may not install or close an underground storage tank unless he has a valid license issued by the department.

(2) From April 1, 1990, through September 30, 1990, the department shall grant an installer an interim license if the installer submits, on a form supplied by the department, information demonstrating competency and experience in the installation and closure of underground storage tanks. All interim licenses expire on October 1, 1990.

(3) The department shall grant an installer a regular license, beginning October 1, 1990, if the installer demonstrates competency and experience in the installation and closure of underground storage tanks, passes a written examination conducted by the department, and pays the license fee established by department rule.

(4) The department shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank installer license. The department shall determine the times and locations of the examinations and shall provide public notice of the examinations.

(5) An underground storage tank installer license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

(6) As a condition of renewal, the department may require that an installer demonstrate continuing competency in the installation and closure of tanks.

(7) An installer need not be a Montana resident to qualify for a license.

Section 7. **Denial, modification, suspension, or revocation of license — grounds.** (1) The department may deny, modify, condition, suspend, or revoke a license if the installer:

(a) fails to achieve a passing grade on a written examination;

(b) fails to pay a license fee;

(c) commits fraud or deceit with respect to the license application;

(d) has had a similar license suspended or revoked in another state or territory; or

(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank.

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(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The installer may request a hearing before the board. If the board grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act.

Section 8. **Permits — application procedure — issuance.** (1) Before the installation or closure of an underground storage tank, the owner or operator shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the tank installation or closure;

(b) the location of the tank installation or closure;

(c) the type of construction of the tank;

(d) the contents of the tank being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank or, if the owner or operator is not going to have the underground storage tank installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under [section 4(1)], the department shall issue the permit.

Section 9. **Inspection of installations and closures — fee.** (1) After being issued a permit, an owner or operator may obtain an inspection by the department in lieu of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the department of the date and location of the underground storage tank installation or closure and shall establish with the department the time when an inspection may be conducted.

(2) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(3) An inspection fee must be paid by the owner or operator to the department to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(4) Department officials or local government officers, such as local health officers, sanitarians, local fire chiefs, or other persons designated or hired by the department, shall conduct inspections on behalf of the department.

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(5) The department shall pay the person conducting an inspection on the department's behalf, as provided in subsection (4), from the underground storage tank license and permit account established in [section 18] up to 80% of any fee collected by the department for the inspection. When an inspection is conducted by an officer of a county or city, the payment must be made by the department to the appropriate county or city treasurer. A county or city shall use payments received under this section only for costs incurred in conducting inspections under this section.

(6) A copy of an installation inspection report must be kept on file by the owner or operator for as long as the department may require by rule. A copy of a closure inspection report must be kept by the owner or operator for 3 years after the date of closure.

(7) The department may enter and inspect the premises or any appurtenant property of an owner or operator at any time to ensure compliance with laws or rules pertaining to underground storage tanks.

Section 10. **Exemption.** The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored shall obtain a permit for the installation or closure of the tank but is not required to obtain the services of a licensed installer.

Section 11. **Administrative enforcement.** (1) When the department believes that a person has violated [sections 1 through 18], a rule adopted thereunder, or a permit provision, it may serve written notice of the violation on the person or his agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation or closure or an order to take necessary corrective action within a reasonable time as stated in the order. The notice and order may be signed and served by a department inspector if it is personally given to the person or to his agent. Every other notice and order must be signed by the director of the department or his deputy and must be served by certified mail upon the person or his agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under [section 12, 14, or 15].

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means.

Section 12. **Injunctions.** The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

(1) immediately restrain any person from engaging in unauthorized activity that is endangering public health or causing damage to the environment;

(2) enjoin a violation of [sections 1 through 18], a rule adopted under [sections 1 through 18], or an order of the department or the board; or

(3) require compliance with [sections 1 through 18], a rule adopted under [sections 1 through 18], or an order of the department or the board.

Section 13. **Imminent hazard.** Upon receipt of evidence that the installation or closure of an underground storage tank may present an imminent and substantial danger to public health or the environment, the department may commence administrative or judicial proceedings to immediately abate the danger or to restrain, order, or enjoin any person from causing the danger. The department may take other judicial or administrative action as may be necessary.

Section 14. **Civil penalties.** (1) Any person who violates any provision of [sections 1 through 18], a rule adopted under [sections 1 through 18], or an order of the department or the board is subject to a civil penalty not to exceed $10,000 per violation. Each day of violation of [sections 1 through 18], a rule adopted under [sections 1 through 18], or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of [sections 1 through 18], rules adopted under [sections 1 through 18], orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under [section 15].

Section 15. **Criminal penalties.** (1) Any owner or operator who knowingly installs or closes an underground storage tank without a permit and either an inspection or the use of the services of a licensed installer as required in [section 5]; any installer who knowingly installs or closes an underground storage tank without being licensed; or any person who knowingly makes any false statements or representations in any application, permit, report, licensing form, or other document filed or maintained as

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required by [sections 1 through 18] or required by rules adopted under [sections 1 through 18] is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of [sections 1 through 18], rules adopted under [sections 1 through 18], orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy.

Section 16. **Compliance with other laws — limitation on local ordinances.** (1) Nothing in [sections 1 through 18] limits or alters the responsibility of an owner, operator, or installer to comply with all other state laws or rules.

(2) Ordinances adopted by local government units requiring installation or closure permits or licensed installers, or both, may be no less stringent than the requirements of [sections 1 through 18].

Section 17. **Application of other law.** (1) The provisions of [sections 1 through 18] and rules adopted under [sections 1 through 18] govern if they conflict with other provisions of Montana law or any action taken by the department under the other provisions of law.

(2) The remedies provided for in [sections 1 through 18] are cumulative with other remedies provided by law.

Section 18. **Underground storage tank license and permit account.** (1) There is an underground storage tank license and permit account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the account:

(a) revenues from permit, license, and inspection fees collected under [sections 1 through 18]; and

(b) revenues from penalties or damages collected under [sections 1 through 18].

(3) Appropriations may be made from the underground storage tank license and permit account only for the administration of the underground storage tank program.

Section 19. **Appropriation.** (1) (a) There is appropriated as a loan from the general fund to the underground storage tank license and permit account $50,000 for the biennium ending June 30, 1991.

(b) There is appropriated $50,000 from the account to the department of health and environmental sciences for the administration of [sections 1 through 18].

(2) The department shall use money from the underground storage tank license and permit account to repay over a 10-year period to the general

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fund the loan amount, plus interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term interest pool.

Section 20. **Exemption from sunrise and audit requirement.** [This act] is exempt from the legislative audit committee report provided for in 2-8-203.

Section 21. **Effective dates.** (1) [Sections 4, 20, and this section] are effective on passage and approval.

(2) [Sections 18 and 19] are effective July 1, 1989.

(3) [Sections 1 through 3 and 5 through 17] are effective April 1, 1990.

Approved April 20, 1989.

# CHAPTER NO. 595

[HB 554]

AN ACT GENERALLY REVISING THE LAWS RELATING TO DISASTER AND EMERGENCY SERVICES; PROVIDING A STATUTORY APPROPRIATION AND AUTHORIZING CERTAIN DISASTER AND EMERGENCY EXPENDITURES; ELIMINATING THE TIME LIMIT THAT AN EMERGENCY PROCLAMATION OR DISASTER DECLARATION MAY CONTINUE WITHOUT CONSENT OF THE LOCAL GOVERNING BODY; CLARIFYING THE AUTHORITY OF THE PRINCIPAL EXECUTIVE OFFICER; AND AMENDING SECTIONS 10-3-101, 10-3-312, 10-3-402, 10-3-403, AND 10-3-406, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 10-3-101, MCA, is amended to read:

**"10-3-101. Declaration of policy.** Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order to provide for prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is declared to be necessary to:

(1) authorize the creation of local or interjurisdictional organizations for disaster and emergency services in the political subdivisions of this state;

(2) reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or manmade disasters;

(3) provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

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(4) clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(5) authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(6) authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(7) provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(8) assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use;

(9) supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services*; and*

*(10) authorize the payment of extraordinary costs and the temporary hiring, with statutorily appropriated funds under 10-3-312, of professional and technical personnel to meet the state's responsibilities in providing assistance in the response to, recovery from, and mitigation of disasters in either state or federal emergency or disaster declarations.*"

Section 2. Section 10-3-312, MCA, is amended to read:

"**10-3-312. Maximum expenditure by governor — appropriation.** *(1)* Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and he is authorized to expend from the general fund, an amount not to exceed *$2* million in any biennium.

*(2) If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and he is authorized to expend from the general fund, an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178.*"

Section 3. Section 10-3-402, MCA, is amended to read:

"**10-3-402. Local emergency — declaration and termination.** (1) A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.

(2) An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.

*(3)* An emergency proclamation may terminate with a disaster declaration or when the principal executive officer determines that the emergency no longer exists."

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Section 4. Section 10-3-403, MCA, is amended to read:

**"10-3-403. Local disaster — declaration and termination.** (1) A disaster declaration may be issued by order or resolution whenever the principal executive officer determines a disaster is occurring or has occurred.

*(2)* A disaster declaration may be terminated when the principal executive officer determines that the disaster conditions no longer exist."

Section 5. Section 10-3-406, MCA, is amended to read:

**"10-3-406. Authority of principal executive officer.** *Upon the declaration of an emergency or disaster under 10-3-402 or 10-3-403 and the issuance of an order as required by 10-3-404, the* principal executive officer *may:*

(1) direct and compel the evacuation of all or part of the population from an emergency or disaster area within that political subdivision when necessary for the preservation of life or other disaster mitigation, response, or recovery; and

(2) control the ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 20, 1989.

# CHAPTER NO. 596

[HB 555]

AN ACT TO APPROPRIATE FUNDS TO HAYS-LODGEPOLE SCHOOL DISTRICT NO. 50, BLAINE COUNTY, FROM THE STATE EQUALIZATION AID ACCOUNT TO ALLEVIATE ANTICIPATED LOSSES IN FUNDING FOR DISTRICT EMPLOYEE SALARIES AND OTHER NECESSARY EXPENDITURES FOR THE SCHOOL FISCAL YEAR ENDING JUNE 30, 1989; TO PROVIDE FOR THE REPAYMENT OF THE APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Hays-Lodgepole School District No. 50, Blaine County, has experienced long-term management problems involving overspending of budgets, misappropriation in federal impact aid funding, and embezzlement of school funds; and

WHEREAS, the current trustees and school district officials are making every effort to keep the school open, to mitigate the on-going financial crisis, and to provide sound fiscal management of the school district budgets; and

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WHEREAS, in spite of these efforts to solve the district's financial crisis, the district will experience a revenue shortfall of $127,682 for the current school fiscal year to pay employee salaries and other necessary expenditures and the only solution available is an appropriation from the Montana Legislature.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated $127,682 from the state equalization aid account, state special revenue fund, for the fiscal year ending June 30, 1989, to Hays-Lodgepole school district no. 50 to alleviate anticipated losses in funding for district employee salaries and other necessary expenditures for the school fiscal year ending June 30, 1989.

Section 2. **Repayment of appropriation.** The Hays-Lodgepole school district shall repay the appropriation beginning July 1, 1991. Repayment of the appropriation, plus interest, which must accrue at the average annual short-term investment pool rate of the preceding fiscal year, must be complete by June 30, 1996. The annual payment must be withheld from the state equalization aid payment as defined in Title 20, chapter 9, part 3.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1989.

# CHAPTER NO. 597

[HB 563]

AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Policy.** As a result of overcharges on the sales of domestic crude oil, the federal courts have ordered or approved settlements requiring the repayment of the total amount of overcharges, plus interest, into an escrow account to be distributed by the U.S. treasury to the states, territories, and possessions of the United States. It is the policy of this state to use the oil overcharge money distributed to the state to supplement state and federal programs that the state administers and to use the money in a manner consistent with federal court orders establishing or approving the payment of the funds to the state of Montana.

Section 2. **Definitions.** As used in [this act], the following definitions apply:

(1) "Cities service payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the consent agreement between cities service oil and gas and the U.S.

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department of energy as affirmed by the federal energy regulatory commission and any interest accrued on the payments.

(2) "Getty oil payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the order of disbursement issued in civil action no. 77-347 (MMS) in the U. S. district court for the district of Delaware and any interest accrued on the payments.

(3) (a) "Stripper well payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the district of Kansas, Cause No. M.D.L. 378, and any interest accrued on the payments. The term also includes but is not limited to cities service payments, as defined in subsection (1), getty oil payments, as defined in subsection (2), texaco payments, as defined in subsection (4), and any unspent project funds, as defined in subsection (5).

(b) The term does not include stripper well payments that have been expended or legally obligated or have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

(4) "Texaco payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the texaco final consent order, 53 Fed. Reg. 32929, August 29, 1988, and any interest accrued on the payments.

(5) "Unspent project funds" means stripper well payments that were not expended or otherwise legally obligated during the 1989 biennium but were appropriated for the 1989 biennium in House Bill 621, Laws of 1987, in:

(a) section 4, subsection (5);

(b) section 9, subsections (8) and (9); and

(c) section 10.

Section 3. **Deposit of oil overcharge revenue.** All funds from stripper well payments must be deposited by the state treasurer in the federal special revenue fund. All interest earned on any of these funds or payments must also be deposited in the federal special revenue fund.

Section 4. **Payment of attorney's fees and costs — appropriation.** There is appropriated $35,000 from the stripper well payments contained in the federal special revenue fund to the department of justice to pay attorney's fees and costs incurred in connection with recovering such payments.

Section 5. **Low-income home weatherization — appropriation.** There is appropriated $900,000 from the stripper well payments contained in the federal special revenue fund to the department of social and rehabilitation services for use in the home weatherization program created in 90-4-201.

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Section 6. **Matching funds for low-income energy assistance — appropriation.** (1) There is appropriated $50,000 from the stripper well payments contained in the federal special revenue fund to the department of social and rehabilitation services for each year in the biennium ending June 30, 1991, for the purpose described in subsection (2).

(2) The department of social and rehabilitation services shall match private contributions to energy share, inc., to be used to assist persons not eligible for federal low-income energy assistance whose income is less than 150% of the federal poverty threshold published by the U.S. bureau of the census in the most recent edition of its publication, Poverty in the United States 1986 (Current Population Reports, Series P-60, No. 160). All of the funds appropriated to the department for this purpose under subsection (1) must be used for clients' fuel bills or other energy needs.

Section 7. **Biological agents for weed control — appropriation.** There is appropriated $150,000 from the stripper well payments contained in the federal special revenue fund to the department of agriculture to continue the collection and distribution of biological agents to control leafy spurge and spotted knapweed. The project will reduce energy consumption by reducing the need for repeated chemical applications and will build upon the accomplishments derived from the funding provided in section 8, House Bill 621, Laws of 1987.

Section 8. **Transloading facility — appropriation.** (1) There is appropriated $300,000 from the stripper well payments contained in the federal special revenue fund to the department of commerce for the project described in subsection (2).

(2) The department of commerce is authorized to issue to Toole County, Montana, a grant for the construction of a truck/train transloading facility. Toole County submitted its proposal to construct a transloading facility following the department's issuance of requests for proposals as required in section 5, House Bill 621, Laws of 1987. The department ranked Toole County's proposal second in its evaluation of the proposals it received and could not fund the project in the 1989 biennium.

Section 9. **State building energy bond program — appropriation.** (1) There is appropriated $550,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for the purpose described in subsection (2).

(2) If [House Bill No. 750 (LC 227)] is passed and approved, the department will use the state of Montana's tax-exempt bonding authority to raise capital to install cost-effective energy retrofit measures on state buildings. Proceeds from the bond sales will pay design and construction costs for the installation of energy retrofit measures. Principal and interest on the bonds will be retired with the energy savings from the installed improvements. After the program is established, it will be revenue-neutral and self-sustaining. The stripper well payments appropriated to the department in subsection (1) are provided to initiate the program and must be

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used to conduct engineering studies to identify cost-effective energy retrofit opportunities in state-owned buildings, to train facility staff to maintain energy savings, and to administer the program.

Section 10. **Technical assistance to local governments — appropriation.** There is appropriated $235,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation to award a grant to a public or private entity to provide technical assistance to local government entities for the purpose of identifying energy conservation measures. The grant must be approved pursuant to 10 CFR 465.8.

Section 11. **Institutional conservation program — appropriation.** There is appropriated $950,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for use in the institutional conservation program for schools and hospitals administered by the department pursuant to 10 CFR 455.

Section 12. **Biennial appropriations.** Except for the low-income energy assistance appropriation provided in [section 6], the appropriations made in [this act] are biennial appropriations.

Section 13. **Appropriations prioritized.** The appropriations in [this act] are approved in order of priority as they appear in [sections 4 through 11], with the appropriation in [section 4] having the highest priority and the appropriation in [section 11] having the lowest priority. If the U.S. department of energy does not approve one or more of the programs that are funded by [this act] or if [House Bill No. 750 (LC 227)] is not passed and approved, any stripper well payments that are not used to fund higher priority programs must be provided to lower ranked programs up to the amounts appropriated in [this act]. If stripper well payments are insufficient to fully fund the appropriations made in [this act], the lowest ranking program must have its appropriation reduced until the deficiency is eliminated. If the deficiency is in excess of the appropriation to the lowest ranking program, the next lowest ranking program must have its appropriation reduced until the deficiency is eliminated, and so forth as the programs are prioritized. In order to provide continuity for the programs when establishing the appropriations for the 1990-91 biennium, anticipated getty oil and texaco oil payments that will be received under the terms of the agreements during the biennium n.ay be considered to establish appropriations to fund the activities. The appropriation provided for in [section 10] must not be made until the state has actually received payments that are sufficient to fund all higher ranked programs approved for funding by the U.S. department of energy. The expenditures authorized by [this act] may not exceed the amount of stripper well payments available in the biennium.

Section 14. **Effective date.** [This act] is effective July 1, 1989.

Approved April 20, 1989.

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# CHAPTER NO. 598

[HB 35]

AN ACT REVISING AND CLARIFYING CERTAIN PERSONAL PROPERTY ASSESSMENT AND TAXATION PROVISIONS; CLARIFYING TAXABLE SITUS OF PERSONAL PROPERTY; REVISING PROCEDURES FOR ASSESSING LIVESTOCK; EXEMPTING FROM TAXATION ALL UNPROCESSED AGRICULTURAL PRODUCTS ON FARMS OR IN STORAGE; DEFINING "COAL AND ORE HAULERS"; TAXING AT 11% ALL BUSES AND TRUCKS HEAVIER THAN 1 TON; AMENDING SECTIONS 15-6-136, 15-6-138 THROUGH 15-6-140, 15-6-207, 15-8-408, 15-8-706, 15-24-902, 15-24-903, AND 15-24-905, MCA; REPEALING SECTIONS 15-24-908 THROUGH 15-24-911, AND 15-24-941 THROUGH 15-24-943, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-136, MCA, is amended to read:

**"15-6-136. Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit; *and*

*(b)* items of personal property intended for lease in the ordinary course of business, provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis.

(2) Class six property is taxed at 4% of its market value."

Section 2. Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools, and supplies except:

(i) those included in class five; and

(ii) coal and ore haulers;

(c) all manufacturing machinery, fixtures, equipment, tools, and supplies except those included in class five;

(d) all trailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2);

(e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;

(f) *buses and* trucks having a rated capacity of more than *1 ton*, including those prorated under 15-24-102; and

(g) all other machinery except that specifically included in another class.

(2) Class eight property is taxed at 11% of its market value."

Section 3. Section 15-6-139, MCA, is amended to read:

**"15-6-139. Class nine property — description — taxable percentage.** (1) Class nine property includes:

*(a)* truck toppers weighing more than 300 pounds;

*(b)* furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

*(c)* x-ray and medical and dental equipment; and

*(d)* citizens' band radios and mobile telephones.

(2) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(3) Class nine property is taxed at 13% of its market value."

Section 4. Section 15-6-140, MCA, is amended to read:

**"15-6-140. Class ten property — description — taxable percentage.** (1) Class ten property includes:

(a) radio and television broadcasting and transmitting equipment;

(b) cable television systems;

(c) coal and ore haulers;

(d) theater projectors and sound equipment; and

(e) all other property not included in any other class in this part except that property subject to a fee in lieu of a property tax.

*(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.*

*(3)* Class ten property is taxed at 16% of its market value."

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Section 5. Section 15-6-207, MCA, is amended to read:

"**15-6-207. Agricultural exemptions.** (1) The following agricultural products are exempt from taxation:

(a) all unprocessed *agricultural products on the* farm *or in* storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products, except livestock;

(d) except as provided in subsection (1)(e), livestock which have not attained the age of 24 months as of March 1;

(e) swine which have not attained the age of 6 months as of January 1;

(f) poultry and the unprocessed products of poultry; and

(g) bees and the unprocessed product of bees.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if such implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area."

Section 6. Section 15-8-408, MCA, is amended to read:

"**15-8-408. Personal property.** Personal property, *other than livestock,* subject to taxation *or a fee in lieu of tax in the state* shall be taxable *in the taxing jurisdiction where it is located on January 1,* whether *or not* the same *is* owned, claimed, or possessed by the person, *as defined in 15-1-102,* owning, claiming, or possessing it on January 1."

Section 7. Section 15-8-706, MCA, is amended to read:

"**15-8-706. Statement by agent to the department.** (1) On the second Monday in July in each year, the agent of the department of revenue in each county must transmit to the department a statement showing:

(a) the several kinds of personal property;

(b) the average and total value of each kind;

(c) the number of livestock;

(d) when practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

(2) An agent of the department who purposely or negligently fails to perform his duty under this section or a deputy or member of the agent's

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staff delegated such duty who purposely or negligently fails to perform such duty is guilty of official misconduct under 45-7-401."

Section 8. Section 15-24-902, MCA, is amended to read:

**"15-24-902. Assessment of livestock.** *The department of revenue or its agent shall assess all nonexempt livestock in each county where they are located on March 1 of each year. The livestock must be assessed to the person by whom they were owned or claimed or in whose possession or control they were at midnight of March 1 in that year.*"

Section 9. Section 15-24-903, MCA, is amended to read:

**"15-24-903. Duty of owner to assist in assessment.** (1) The owner of livestock, as defined in 15-24-901, or his agent, at the time of assessment shall make and deliver to the department of revenue or its agent in the county or counties where his livestock were located *on March 1*, a written statement, under oath, showing the different kinds of his livestock within the county or counties belonging to him or under his charge, with their marks and brands.

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date."

Section 10. Section 15-24-905, MCA, is amended to read:

**"15-24-905. Livestock brought into state — notice to department of revenue or its agent.** The owner or the agent, manager, or foreman of any person, corporation, or association bringing livestock into this state after *March* 1 shall immediately after said livestock *cross* the state line forward to the department of revenue or its agent in the county into which the livestock *are* moved a registered or certified letter, which letter shall contain the name of the owner of such livestock, the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock *were* brought across the state line, provided that the department of livestock at least once each month furnish from its own records to the department of revenue or its agent in the county into which such livestock *are* moved a list of the number and kind of livestock so moved, together with the name of the owner thereof."

Section 11. **Repealer.** Sections 15-24-908 through 15-24-911 and 15-24-941 through 15-24-943, MCA, are repealed.

Section 12. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 13. **Applicability.** [This act] applies to tax years beginning after December 31, 1989.

Approved April 21, 1989.

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# CHAPTER NO. 599

[HB 165]

AN ACT REQUIRING PAYMENT OF REGISTRATION, SPECIAL WEED CONTROL, AND DECAL FEES FOR OFF-HIGHWAY VEHICLES; REQUIRING A CERTIFICATE OF OWNERSHIP; PROVIDING FOR LICENSING OF OFF-HIGHWAY VEHICLE DEALERS; CREATING AN OFF-HIGHWAY VEHICLE RECREATIONAL USE ACCOUNT; AMENDING SECTIONS 23-2-801, 23-2-803, 23-2-804, 23-2-806, 23-2-807, AND 61-3-510, MCA; REPEALING SECTION 23-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 23-2-801, MCA, is amended to read:

**"23-2-801. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) (a) "Off-highway vehicle" means a self-propelled vehicle used for recreation or cross-country travel on public lands, trails, easements, lakes, rivers, or streams. The term includes but is not limited to motorcycles, quadricycles, dune buggies, amphibious vehicles, air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.

(b) Off-highway vehicle does not include:

(i) vehicles designed primarily for travel on, over, or in the water;

(ii) snowmobiles; or

(iii) *except as provided in [section 7],* vehicles otherwise licensed under the laws of the state.

(2) *"Certificate of ownership" means a document issued by the department of justice as prima facie evidence of ownership as provided in [section 2].*"

Section 2. **Certificate of ownership — procedure — fee.** (1) No off-highway vehicle may be operated upon any public lands, trails, easements, lakes, rivers, or streams unless a certificate of ownership has first been obtained from the department of justice.

(2) The owner of an off-highway vehicle shall apply for a certificate of ownership to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The form must include:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business address or home mailing address of the owner;

(d) the name and address of any lienholder;

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(e) the amount due under any contract, mortgage, or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom the off-highway vehicle was acquired.

(3) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(4) The application for a new certificate of ownership must be accompanied by the immediately previous certificate. This subsection does not apply to off-highway vehicles that are purchased as new and unused machines or that were operated before [the effective date of this act].

(5) (a) After the owner completes the application form, the county treasurer shall issue to the applicant two copies of the completed application, with one marked "file copy", and shall forward one copy and the original application to the department of justice. The department of justice shall enter the information contained in the application upon the corresponding records of its office and shall send the applicant a certificate of ownership containing a permanent ownership number and information from the application considered necessary by the department of justice.

(b) The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the off-highway vehicle.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $4 must be paid to the county treasurer, of which:

(a) $3 must be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund; and

(b) $1 must be retained by the county treasurer for the cost of administering this section.

Section 3. **Transfer of interest.** (1) To transfer a certificate of ownership for an off-highway vehicle registered under [section 6], the person whose title or interest is to be transferred shall endorse the certificate of ownership in the appropriate space on the reverse side of the certificate and have his signature acknowledged before a notary public.

(2) (a) Within 20 calendar days after the date of notarization, the transferee shall apply to the county treasurer of the county in which he resides for:

(i) transfer of the endorsed certificate of ownership;

(ii) registration of the off-highway vehicle; and

(iii) issuance of a decal as required by 23-2-804.

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(b) The county treasurer shall forward the application and the original certificate of ownership to the department of justice, which shall file the application upon receipt.

(c) A certificate of ownership may not be issued by the department until the outstanding certificates are surrendered to that office or their loss is established.

(d) The county treasurer shall collect a fee of $4 for each application for transfer of ownership, of which:

(i) $3 must be forwarded to the department of justice for deposit in the motor vehicle recording account of the state special revenue fund; and

(ii) $1 must be retained by the county treasurer for the cost of administering this section.

(3) To effect by operation of law a transfer of interest in an off-highway vehicle, the provisions of 61-3-201(3) are applicable.

(4) (a) A person who purchases a new or used off-highway vehicle from an off-highway vehicle dealer licensed under [section 12] shall, within 20 calendar days after the purchase date, apply to the county treasurer of the county in which he resides for:

(i) a certificate of ownership;

(ii) registration of the off-highway vehicle; and

(iii) a decal as required by 23-2-804.

(b) During this period the sticker provided for in subsection (6) must remain affixed to the off-highway vehicle.

(5) It is not a violation of this part for a purchaser to operate a newly acquired off-highway vehicle without a certificate of ownership, a certificate of registration, and a decal during the first 20 days of ownership.

(6) Prior to the delivery of the off-highway vehicle to the purchaser, the dealer shall issue and affix to the off-highway vehicle a sticker, in a form to be prescribed by the department of justice, containing the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the off-highway vehicle, including its identification number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the department of justice.

(7) The provisions of subsection (2) do not apply to the transfer of an off-highway vehicle to an off-highway vehicle dealer licensed under [section 12] who intends to resell the vehicle and who operates it only for demonstration purposes. Every dealer, upon a transfer of interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership showing the name of the lienholder and the amount due under the contract, mortgage, or lien as required by [section 2(2)(d) and (2)(e)].

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Section 4. **Lost or mutilated certificate.** If a certificate of ownership is lost or mutilated or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate certificate upon payment of a fee of $4 to the department of justice.

Section 5. Section 23-2-803, MCA, is amended to read:

**"23-2-803. Fee in lieu of tax on off-highway vehicles — exception — disposition of fees.** (1) There is a fee in lieu of tax on off-highway vehicles, *other than off-highway vehicles constituting the inventory of a dealership licensed under [section 12]*, to be paid to the county treasurer of the county in which the owner of the off-highway vehicle resides.

(a) The fee for an off-highway vehicle less than 3 years old is *$18*. In all other cases the fee is *$8*.

(b) The age of an off-highway vehicle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(2) The county treasurer shall distribute all fees in lieu of tax collected on off-highway vehicles pursuant to this section in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed."

Section 6. **Registration fee — application and issuance — disposition.** (1) Each off-highway vehicle is subject to an annual registration fee of $2.

(2) The county treasurer shall collect the annual fee when the fee in lieu of tax is collected.

(3) Application for registration must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The application must contain:

(a) the name and home mailing address of the owner;

(b) the certificate of ownership number;

(c) the name of the manufacturer of the off-highway vehicle;

(d) the model number or name;

(e) the year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax; and

(g) such other information as the department of justice may require.

(4) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt, which must contain the information considered necessary by the department of justice and a listing of the fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county

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treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(5) All registration fees collected must be forwarded to the department of justice and deposited in the motor vehicle recording account of the state special revenue fund.

Section 7. Section 23-2-804, MCA, is amended to read:

**"23-2-804. Decal required — fee — disposition.** *(1)* Except as provided in 23-2-802, no off-highway vehicle may be operated by any person *for recreation on public lands* in Montana unless there is displayed in a conspicuous place a decal, in a form prescribed by the department *of justice and issued by the county treasurer*, as visual proof that *the following fees have been paid for the current year:*

*(a) (i)* the fee in lieu of tax provided for in 23-2-803*; and*

*(ii) the registration fee provided for in [section 6]; or*

*(b) when the vehicle will be used as provided in this section, the registration and taxation fees for motorcycles and quadricycles subject to licensure under 61-3-321, as evidenced by presentation of an owner's certificate of registration and payment receipt;*

*(c) the weed control fee provided for in 61-3-510; and*

*(d) the off-highway decal fee provided for in this section.*

*(2)* The decal will be serially numbered and have the expiration date of December 31 of the appropriate year printed thereon.

*(3) The off-highway decal fee is $5, which the county treasurer shall collect and transmit to the state treasurer, who shall deposit the money in an interest-bearing account in the state special revenue fund to the credit of the department of fish, wildlife, and parks. The decal fee and the interest and income to the account must be spent as follows:*

*(a) 40% must be used to enforce the provisions of this section; and*

*(b) 60% must be spent to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreation use except that:*

*(i) no money may be spent for this purpose before January 1, 1991; and*

*(ii) evaluation for development of a program plan must begin January 1, 1991."*

Section 8. **Duplicate decal.** If a decal required in [section 7] indicating that the off-highway vehicle fee has been paid for the current year is lost, mutilated, or becomes illegible, the person to whom it was issued shall immediately apply for and obtain a duplicate decal upon payment of a fee of $5 to the county treasurer, who shall distribute the fee as provided in 23-2-804(3).

Section 9. Section 23-2-806, MCA, is amended to read:

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"**23-2-806. Enforcement.** The *department of fish, wildlife, and parks* enforcement personnel, sheriffs and their deputies, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this part."

Section 10. Section 23-2-807, MCA, is amended to read:

"**23-2-807. Penalty — disposition.** (1) The failure to display a current decal indicating that the fee in lieu of tax, *registration fees, decal fees, and, when applicable, taxes on licensed vehicles have* been paid on the off-highway vehicle for the current year as provided in 23-2-804 is a misdemeanor punishable by a fine *of $50.*

(2) All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the *account created under 23-2-804(3). Fifty percent of this money and the interest earned on it must* be used for off-highway vehicle safety and education. *The remaining 50% of the money and the interest earned on it must be used for enforcement.*"

Section 11. Section 61-3-510, MCA, is amended to read:

"**61-3-510. Weed control fee.** (1) A special weed control fee of 50 cents must be assessed on the annual registration or reregistration of each motor vehicle subject to registration. The fee must be collected by the county treasurer.

(2) For purposes of this section, motor vehicle includes:

(a) motor vehicle as defined in 61-1-102;

(b) motorcycle as defined in 61-1-105;

(c) motor-driven cycle as defined in 61-1-106;

(d) quadricycle as defined in 61-1-133*; and*

*(e) off-highway vehicle as defined in 23-2-801.*

(3) The following vehicles are exempt from the fee:

(a) vehicles owned or controlled by the United States or a state, county, or city;

(b) vehicles exempt from payment of registration fees by 61-3-321(7); and

(c) vehicles or equipment which is not self-propelled or which requires towing when moved upon a highway of this state."

Section 12. **Dealer registration certificate — use of fees.** (1) Unless the dealer is licensed under the provisions of 61-4-101, a dealer may not sell off-highway vehicles unless he has first obtained a dealer registration certificate from the department of justice under the provisions of this section.

(2) The dealer application for registration or renewal of registration must be accompanied by an application or renewal fee of $5 and a registration fee of $5. To qualify for the fees in this subsection, the applicant for

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renewal shall certify that he has sold three or more off-highway vehicles during the preceding year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two dealer off-highway identification cards to be carried by the dealer or the dealer's customer when demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards may be purchased by the dealer from the department of justice for a fee of $2 each.

(3) No bond is required of the dealer.

(4) The dealer shall have a principal place of business where he maintains all his business records and where he displays and sells merchandise.

(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify under subsection (2) shall:

(a) pay an additional $50 renewal registration fee; and

(b) provide a copy of a new off-highway vehicle franchise or sales agreement that he has with a manufacturer, importer, or distributor.

(6) Dealer registration certificates and identification cards expire on December 31 following the date of issuance.

(7) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the motor vehicle recording account of the state special revenue fund to be used by the department of justice for the administration of [this act].

(b) All dealer registration fees and renewal fees collected must be deposited in the account provided in 23-2-804(3). This money and the interest earned on it must be used for off-highway vehicle safety and education programs.

Section 13. **Repealer.** Section 23-2-805, MCA, is repealed.

Section 14. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 15. **Codification instruction.** [Sections 2 through 4, 6, 8, and 12] are intended to be codified as an integral part of Title 23, chapter 2, part 8, and the provisions of Title 23, chapter 2, part 8, apply to [sections 2 through 4, 6, 8, and 12].

Section 16. **Coordination instruction.** If House Bill No. 477, including amendments to 23-2-803 to require deposit of a portion of the fee in lieu of tax on off-highway vehicles in the noxious weed trust fund, is passed and approved, the following provisions of [this act] are void:

(1) [section 11]; and

(2) those amendments to 23-2-804 relating to imposition of weed control fee on off-highway vehicles.

Section 17. **Effective date.** [This act] is effective January 1, 1990.

Approved April 21, 1989.

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# CHAPTER NO. 600

[HB 391]

AN ACT TO EXTEND COLLECTION OF PENALTIES AND INTEREST ON OVERDUE EMPLOYER CONTRIBUTIONS TO THE STATE UNEMPLOYMENT INSURANCE FUND FOR USE BY THE DEPARTMENT OF LABOR AND INDUSTRY TO ADMINISTER THE UNEMPLOYMENT INSURANCE LAW AND FOR PROGRAMS TO TRAIN AND RETRAIN UNEMPLOYED AND UNDEREMPLOYED PERSONS; AMENDING SECTION 3, CHAPTER 13, SPECIAL LAWS OF JUNE 1986; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3, Chapter 13, Special Laws of June 1986, is amended to read:

"Section 3. **Effective date — termination date.** This act is effective on passage and approval and terminates July 1, *1991*."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1989.

# CHAPTER NO. 601

[HB 754]

AN ACT ESTABLISHING A RIVER RESTORATION PROGRAM AND A RIVER RESTORATION ACCOUNT; FUNDING THE ACCOUNT THROUGH A 50-CENT INCREASE IN THE COST OF A CLASS A RESIDENT FISHING LICENSE AND A CLASS AAA SPORTSMAN'S LICENSE AND A $1 INCREASE IN THE COST OF A CLASS B NONRESIDENT FISHING LICENSE; AMENDING SECTION 8, CHAPTER 636, LAWS OF 1987, AND SECTIONS 87-2-301, 87-2-302, AND 87-2-711, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

It is the intent of the legislature that the department of fish, wildlife, and parks conduct the river restoration program in coordination, communication, and cooperation with local landowners, lessees, and conservation district officials so that projects conducted under the program will benefit the river resource and all parties involved.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** The legislature finds that the conservation of rivers and their fisheries is of vital social and economic importance to Montana. The legislature further finds that some of our state's rivers and

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fisheries are diminished in value by water pollution, water shortages, and riparian erosion and that there is a need for a program to promote the beneficial use and productivity of our river systems. The legislature further finds that establishment of a river restoration program, funded by anglers from across the state and nation, is a sound and proper method to help ensure that the rivers and fisheries that anglers and others have treasured for Montana's first 100 years will continue to serve the state and its people.

Section 2. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Account" means the river restoration account provided for in [section 4].

(2) "Associated lands" means the beds, banks, and immediately adjacent lands associated with a river.

(3) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(4) "Program" means the river restoration program provided for in [section 3].

(5) "Restoration" means to restore to a good condition, regenerate, or make over in an improved form.

(6) "River" means a river, stream, creek, or other naturally occurring body of flowing water.

Section 3. **River restoration program.** (1) The department shall administer a river restoration program.

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat.

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) No project conducted under the program may restrict or interfere with the exercise of any water right.

Section 4. **River restoration account.** (1) There is a river restoration special revenue account administered by the department within the state special revenue fund established in 17-2-102.

(2) There must be deposited in the account:

(a) all proceeds earmarked for this account under 87-2-301, 87-2-302, and 87-2-711; and

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(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of this account.

(3) The department may spend funds in the account only to carry out the program provided for in [section 3].

Section 5. **Funding for river restoration account.** The amount of money specified in this section from the sale of each of the following licenses must be deposited in the account provided for in [section 4]:

(1) Class A—resident fishing license, 50 cents;

(2) Class B—nonresident fishing license, $1; and

(3) Class AAA—sportsman's license, 50 cents.

Section 6. Section 87-2-301, MCA, is amended to read:

**"87-2-301. Class A—resident fishing license.** Any resident, as defined by 87-2-102, upon payment of a fee of *$9.50*, shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the department."

Section 7. Section 87-2-302, MCA, is amended to read:

**"87-2-302. Class B—nonresident fishing license.** Any person not a resident, as defined in 87-2-102, upon payment of the sum of *$36* to any agent of the department authorized to issue fishing and hunting licenses, shall be entitled to a Class B license which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the department."

Section 8. Section 87-2-711, MCA, is amended to read:

**"87-2-711. (Effective March 1, 1988, to March 1, 1994) Class AAA—sportsman's license.** Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of *$45.50*, shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6, and resident conservation licenses as prescribed in 87-2-202. The department shall furnish each holder of a sportsman's license an appropriate decal. **(Chapter 598 terminates March 1, 1994—sec. 12, Ch. 598, L. 1987. Fee becomes** *$38.50* March 1, 1994.)"

Section 9. Section 8, Chapter 636, Laws of 1987, is amended to read:

"Section 8. Section 87-2-711, MCA, is amended to read:

**"87-2-711. Class AAA—sportsman's license.** Any resident, as defined by 87-2-102, who will be 12 years of age or older prior to September 15 of the season for which the license is issued, upon payment of the sum of *$38.50*, shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6, and resident conservation licenses as prescribed in 87-2-202. The department shall furnish each holder of a sportsman's license an appropriate decal.""

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Section 10. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 11. **Applicability date.** [Sections 6, 7, and 8] apply to licenses for fishing seasons that begin on or after March 1, 1990.

Section 12. **Effective date.** [This act] is effective July 1, 1989.

Approved April 21, 1989.

# CHAPTER NO. 602

[SB 91]

AN ACT PROVIDING FOR SALE OF STATE LANDS COMPRISING LEASED CABIN OR HOME SITES OR CITY OR TOWN LOTS UPON REQUEST OF THE LESSEES THEREOF; EXEMPTING SALES FROM CERTAIN SUBDIVISION LAWS; PROVIDING FOR PERMANENT EASEMENTS; PROVIDING FOR CONSERVATION EASEMENTS FOR SALES; ESTABLISHING AN APPRAISAL REVIEW BOARD; CLARIFYING THE BIDDING REQUIREMENTS FOR SALE OF STATE LANDS; AND AMENDING SECTIONS 77-2-301, 77-2-303, AND 77-2-324, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-2-301, MCA, is amended to read:

**"77-2-301. Sales of state land under board control.** The board is hereby vested with the power and authority to decide when sales of state la..ᵭ are to be held and what state lands are to be offered for sale, subject to the limitations of this title, as the best interests of the state may appear to require. As a general rule *and except as provided in [section 3]*, no sale of state lands shall be held unless applications have been made for the purchase of lands within one county by prospective purchasers representing at least 12 families."

Section 2. Section 77-2-303, MCA, is amended to read:

**"77-2-303. Restrictions on land available for sale.** (1) *Except as provided in [section 3], lands* classified as timberlands are not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law.

(2) Lands which in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits are not subject to sale, either the surface land or any of such deposits therein. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(3) (a) There is also reserved from sale from all state lands bordering on navigable lakes or bordering on nonnavigable meandered lakes and from

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all state lands bordering on navigable streams, as the board may deem in the best interests of the state, a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall extend in width landward from the line of high-water mark of such lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of such abutting government lot at its narrowest point is less than 100 feet, then the strip hereby reserved shall extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection shall be subject to the granting of easements the same as other state lands.

(b) Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this title for the leasing of other state lands."

Section 3. **Sale of leased cabin or home sites or city or town lots.** (1) At the request of the lessee and if consistent with the orderly development and management of state lands, the board may make available for sale, in the manner provided in this part, any leased cabin or home site or city or town lot that was under lease on [the effective date of this act].

(2) The lessee requesting the sale shall have prepared a current certificate of survey for the property. The cost of preparation of the certificate of survey must be included in the settlement for improvements, as provided for in 77-2-325, if a person other than the lessee is the purchaser.

(3) The sale of a lease is exempt from the subdivision laws, except that the development of any new, replacement, or additional water supply or sewage disposal system on the property must be approved pursuant to the review procedure, fee, and other requirements of Title 76, chapter 4, part 1.

(4) The sale of a leased cabin or home site or city or town lot under [this act] must be completed no later than 10 years after [the effective date of this act]. A lessee may request a lease sale at any time during the 10-year period. Upon request, the board may grant a handicapped lessee or a lessee 65 years of age or older an additional 10-year period to request a sale of leased land.

(5) Upon a sale of leased land, the department shall, upon compliance with 77-2-101 through 77-2-106, grant a permanent easement across state lands to secure access using current routes.

Section 4. **Conservation easement for certain sales.** As a condition of any sale initiated pursuant to [section 3], the board shall, if consistent with its trust responsibility, grant to the state of Montana a conservation easement, as provided for in 76-6-203, for the leased cabin or home site or city or town lot to be sold. The conservation easement must run with the land in perpetuity and must:

(1) prohibit subdivision of the land, lake, or stream;

(2) for property within 100 feet of a river, stream, or lake, prohibit the cutting of trees except as necessary for construction on the lot, fire prevention, safety, or protection of personal property; and

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(3) require that any permanent structure be set back 25 feet from the high-water mark of a lake or stream.

Section 5. **Appraisal review board.** The department shall establish an appraisal review board consisting of three independent appraisers who shall make the final decision on a disputed state appraisal made for purposes of [section 3] when the appraisal value is less than the amount of bid made pursuant to 77-2-323.

Section 6. Section 77-2-324, MCA, is amended to read:

**"77-2-324. Preference to lessee of land.** The lessee of the land need not make a higher bid than others, but he shall *have the option to match the high bid and must* be given the preference. *If the lessee matches the high bid, bidding must be reopened to all bidders, with the lessee retaining the right of preference to match the ultimate high bid and be awarded the sale.*"

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Codification instruction.** [Sections 3 through 5] are intended to be codified as an integral part of Title 77, chapter 2, part 3, and the provisions of Title 77, chapter 2, part 3, apply to [sections 3 through 5].

Approved April 21, 1989.

# CHAPTER NO. 603

[SB 134]

AN ACT TO PROVIDE GREATER FINANCIAL INCENTIVES FOR GENERAL RELIEF ASSISTANCE RECIPIENTS TO OBTAIN EMPLOYMENT BY ALLOWING A GREATER EARNED INCOME DISREGARD, BY EXTENDING ELIGIBILITY FOR GENERAL RELIEF MEDICAL ASSISTANCE IF ELIGIBILITY FOR GENERAL RELIEF ASSISTANCE IS LOST DUE TO EMPLOYMENT, AND BY ELIMINATING THE INCOME SPENDDOWN REQUIREMENT FOR GENERAL RELIEF MEDICAL ASSISTANCE; AMENDING SECTIONS 53-3-205, 53-3-206, AND 53-3-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-3-205, MCA, is amended to read:

**"53-3-205. Eligibility for general relief.** (1) A person or persons constituting a household may receive general relief assistance for basic necessities if the household is determined to be eligible under the provisions of this section and is in need of such assistance as a result of their infirmity, misfortune, or indigency.

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(2) A household is eligible for general relief if the household income, exclusive of the *earned income disregard provided for in subsection (3)*, does not exceed that set forth in the following table:

| Number of Persons in Household | Monthly Income Standard |
|---|---|
| 1 | $212 |
| 2 | 282 |
| 3 | 354 |
| 4 | 426 |
| 5 | 501 |
| 6 | 570 |
| 7 | 642 |
| 8 | 713 |
| 9 | 785 |
| 10 or more | 857 |

*(3) For 4 consecutive months, the first $30 plus one-third of the remainder of the total income earned each month by each household member who is a current recipient must be disregarded in determining a household's eligibility for general relief assistance. If the total household income, exclusive of this amount, exceeds that set forth in the table in subsection (2), the household is not eligible for general relief assistance. A current recipient is one who has been receiving general relief assistance for at least 1 complete calendar month.*

*(4)* Able-bodied persons without dependent minor children living in the household are not eligible for nonmedical general relief assistance, except as provided in 53-3-209.

*(5)* (a) When the household's income exceeds the monthly income standard for a household of that size because of receipt of lump-sum income, the household will be ineligible for general relief for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard for a household of that size. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump sum was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of a lump sum does not preclude eligibility for general relief medical assistance.

*(6)* All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

*(7)* Prospective income that is reasonably certain to be received by the household during an eligibility period must be considered when determining eligibility.

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*(8)* The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(a) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(b) a motor vehicle that has no more than $1,500 in equity value;

(c) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(d) tools of a trade that are essential to the current or future employment of a household member.

*(9)* A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

*(10)* A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

*(11)* For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

*(12)* Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination.

*(13)* An alien determined to be illegally within the United States is not eligible for general relief."

Section 2. Section 53-3-206, MCA, is amended to read:

**"53-3-206. Eligibility for general relief medical assistance.** (1) In order to be considered for eligibility for general relief medical assistance, a person must be found to have a serious medical condition.

(2) Eligibility for general relief medical assistance must be determined as provided in this section and 53-3-205. A person with a serious medical condition must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

(3) All persons who reside in the same residence and are legally related to or responsible for each other are considered to be one household for purposes of determining general relief medical assistance.

(4) All individual or household resources must be used to offset medical obligations except those excluded in 53-3-205*(8)*.

(5) To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances

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under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in 53-3-205(2) is eligible for such medical assistance.

(6) In a county with state-assumed welfare services, a person is not eligible for medical services if the household in which he resides has an average monthly income *after consideration of the earned income disregard provided for in 53-3-205(3),* reasonably certain to be received in a 12-month period beginning with the month the medical service was provided, in excess of that set forth in the following table:

| Family Size | Monthly Income Level |
|---|---|
| 1 | $ 287 |
| 2 | 433 |
| 3 | 526 |
| 4 | 618 |
| 5 | 714 |
| 6 | 804 |
| 7 | 896 |
| 8 | 988 |
| 9 | 1,081 |
| 10 | 1,173 |
| 11 | 1,194 |
| 12 | 1,215 |
| 13 | 1,236 |
| 14 | 1,256 |
| 15 | 1,277 |
| 16 or more | 1,298 |

*(7) Notwithstanding the other provisions of this section, in a county with state-assumed welfare services, a person whose eligibility for general relief assistance is terminated because of earned income from employment may continue to receive general relief medical assistance for 1 month."*

Section 3. Section 53-3-311, MCA, is amended to read:

**"53-3-311. Amount of general relief for basic necessities.** (1) In a county without state-assumed welfare services, the amounts of general relief for basic necessities must be determined and adopted at the discretion of the county welfare board.

(2) In a county with state-assumed welfare services, the amount of general relief for basic necessities available to an eligible household is the amount listed for the same size household in the table in 53-3-205(2), less income and resources not excluded in 53-3-205*(3) and (8).*"

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Coordination instruction.** If House Bill No. 742 is passed and approved and if it contains a section eliminating the monthly income

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standard in 53-3-205, then [section 1(3) of this act] is amended so the language that reads "If the total household income, exclusive of this amount, exceeds that set forth in the table in subsection (2)" will read "If the total household income, exclusive of this amount, exceeds the amount established by the department under subsection (2)".

Section 6. **Effective date — applicability.** [This act] is effective on passage and approval and applies to eligibility and grant determinations beginning July 1, 1989.

Approved April 21, 1989.

# CHAPTER NO. 604

[SB 166]

AN ACT PROVIDING FOR ADMINISTRATION OF TEMPORARY PRELIMINARY AND PRELIMINARY DECREES BY THE DISTRICT COURTS; PROVIDING THAT FOR PURPOSES OF ADMINISTERING WATER RIGHTS, THE PRIMA FACIE STATUS OF A CLAIM IS SUPERSEDED BY THE ISSUANCE OF A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE, AS MODIFIED AFTER OBJECTIONS AND HEARINGS; AMENDING SECTIONS 3-7-201, 3-7-211, 3-7-212, 3-7-501, 85-2-227, 85-2-406, AND 85-5-101, MCA; REPEALING SECTION 3-7-213, MCA; AND PROVIDING AN EFFECTIVE DATE AND RETROACTIVE AND PROSPECTIVE APPLICABILITY.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-7-201, MCA, is amended to read:

**"3-7-201. Designation of water judge.** (1) A water judge shall be designated within 30 days after May 11, 1979, for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. Except as provided in subsection (2), a water judge must be a district judge or retired district judge of a judicial district wholly or partly within the water division.

(2) A district judge or retired district judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which he is requested to sit.

(3) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division."

Section 2. Section 3-7-211, MCA, is amended to read:

**"3-7-211. Appointment of water commissioners.** The *district court having jurisdiction over the hydrologically interrelated portion of a*

*water division as described in 85-2-231(2) in which the controversy arises* may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."

Section 3. Section 3-7-212, MCA, is amended to read:

**"3-7-212. Enforcement of decrees.** The *district court having jurisdiction* may enforce the provisions of a final decree. *In the absence of any final decree having been issued, the district court having jurisdiction may enforce the provisions of a temporary preliminary decree or preliminary decree entered under 85-2-231, as modified by a water judge after objections and hearings.*"

Section 4. Section 3-7-501, MCA, is amended to read:

**"3-7-501. Jurisdiction.** (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

(2) No water judge may preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division."

Section 5. Section 85-2-227, MCA, is amended to read:

**"85-2-227. Claim to constitute prima facie evidence.** *For purposes of adjudicating rights pursuant to this part, a* claim of an existing right filed in accordance with 85-2-221 *or an amended claim of existing right* constitutes prima facie proof of its content until the issuance of a final decree. *For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.*"

Section 6. Section 85-2-406, MCA, is amended to read:

**"85-2-406. District court supervision of water distribution.** (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to part 2 of this chapter *or when a basin is the subject of a temporary preliminary decree or preliminary decree, as modified after objections and hearings,* any

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party to the controversy *or any person whose rights are or may be affected by enforcement of the decree* may petition the district court for relief. The district court from which relief is sought may grant injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the issuance of the final decree.

(3) *A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court that issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.*

*(4) If an action to enforce a temporary preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.*

*(5) (a) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).*

*(b) The water judge is not bound by a supreme court determination on an appeal entered under this subsection in issuing any subsequent decree under part 2 of this chapter."*

Section 7. Section 85-5-101, MCA, is amended to read:

**"85-5-101. Appointment of water commissioners.** (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, *including temporary preliminary, preliminary, and final decrees issued by a water judge,* it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners. The commissioners shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

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(2) When the existing rights of all appropriators from a source or in an area have been determined in a *temporary preliminary decree, preliminary decree, or* final decree issued under chapter 2 of this title, the judge of the district court shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) At the time of the appointment of such water commissioner or commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters, including permittees and certificate holders, shall pay their proportionate share of such fees and compensation.

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute such stored water to said irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of such stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection."

Section 8. **Repealer.** Section 3-7-213, MCA, is repealed.

Section 9. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Retroactive and prospective applicability.** (1) [This act] applies retroactively, within the meaning of 1-2-109, to all temporary preliminary decrees and preliminary decrees that have been issued by the Montana water courts and prospectively to all decrees issued on or after [the effective date of this act].

(2) A person whose existing rights are determined in a temporary preliminary decree or a preliminary decree issued before [the effective date of

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this act] may petition the water judge for relief concerning any matter in the decree prior to enforcement of the decree.

Section 12. **Effective date.** [This act] becomes effective on the latest date on which any of the following occurs:

(1) passage and approval of [this act], [Senate Bill No. 169 (LC 683)] or [Senate Bill No. 167 (LC 686)]; or

(2) a final determination of failure to receive passage and approval of [Senate Bill No. 169 (LC 683)] or [Senate Bill No. 167 (LC 686)].

Approved April 21, 1989.

# CHAPTER NO. 605

[SB 169]

AN ACT PROVIDING THAT A WATER JUDGE MAY ISSUE A TEMPORARY PRELIMINARY DECREE IF THE DECREE IS NECESSARY FOR THE ORDERLY ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS; PROVIDING FOR OBJECTIONS AND HEARINGS ON TEMPORARY PRELIMINARY DECREES; INCREASING THE TIME LIMIT FOR REQUESTING A HEARING ON A TEMPORARY PRELIMINARY DECREE OR A PRELIMINARY DECREE; AMENDING SECTIONS 85-2-231 THROUGH 85-2-233 AND 85-2-235, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-231, MCA, is amended to read:

**"85-2-231. Temporary preliminary and preliminary decree.** *(1) A water judge may issue a temporary preliminary decree prior to the issuance of a preliminary decree if the temporary preliminary decree is necessary for the orderly adjudication or administration of water rights.*

*(2) (a)* The water judge shall issue a preliminary decree. The preliminary decree shall be based on:

*(i)* the statements of claim before the water judge;

*(ii)* the data submitted by the department;

*(iii)* the contents of compacts approved by the Montana legislature and the tribe or federal agency or, lacking an approved compact, the filings for federal and Indian reserved rights; and

*(iv)* any additional data obtained by the water judge.

*(b)* The preliminary decree shall be issued within 90 days after the close of the special filing period set out in 85-2-702(3) or as soon thereafter as is reasonably feasible.

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*(c)* This section does not prevent the water judge from issuing an interlocutory decree or other temporary decree, pursuant to 85-2-321 *or as provided in subsection (1) of this section,* or if such a decree is otherwise necessary for the orderly administration of water rights prior to the issuance of a preliminary decree.

*(3)* A preliminary decree may be issued for any hydrologically interrelated portion of a water division, including but not limited to a basin, subbasin, drainage, subdrainage, stream, or single source of supply of water, at a time different from the issuance of other preliminary decrees or portions of the same decree.

*(4)* The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under 85-2-234. The water judge shall include in the preliminary decree the contents of a compact negotiated under the provisions of part 7 that has been approved by the legislature and the tribe or federal agency.

*(5)* If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (3) and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

*(6) In issuing a subsequent preliminary decree, the water judge shall incorporate the temporary preliminary decree for the basin as modified by objections and hearings. [The temporary preliminary decree or preliminary decree, as modified after objections and hearings, is enforceable and administrable according to its terms among parties ordered under 85-2-406.] The preliminary decree, as modified after objections and hearings, shall upon issuance supersede and replace the temporary preliminary decree."*

Section 2. Section 85-2-232, MCA, is amended to read:

**"85-2-232. Availability of temporary preliminary or preliminary decree.** (1) The water judge shall send *to the department* a copy of *any temporary preliminary decree or* preliminary decree *issued for a basin,* and the water judge shall serve by mail a notice of availability of the *temporary preliminary decree or* preliminary decree to each person who has filed a claim of existing right *within the decreed basin* and to the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed *within the decreed basin* or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a permit *to beneficially use water within the decreed basin* pursuant to Title 85, chapter 2, part 3, those granted a reservation *within the decreed basin* pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of

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the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the *temporary preliminary decree or* preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

*(2) Notice of the availability of a preliminary decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation which cover the water division or divisions in which the decreed basin is located. This notice must be provided before the final decree for the basin is issued.*

*(3)* Any person may obtain a copy of the *temporary preliminary decree or* preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater, to the water judge."

Section 3. Section 85-2-233, MCA, is amended to read:

**"85-2-233. Hearing on temporary preliminary decree or preliminary decree.** (1) *(a) For good cause shown, a hearing shall be held before the water judge on any objection to a temporary preliminary decree or* preliminary decree by*:*

*(i)* the department*;*

*(ii)* a person named in the *temporary preliminary decree or* preliminary decree*;*

*(iii)* any person *within the basin entitled to receive notice under 85-2-232(1); or*

*(iv) any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice under 85-2-232 if his claim or claims were from sources within the decreed basin.*

*(b) A person does not waive the right to object to a preliminary decree by failing to object to a temporary preliminary decree. However, a person may not raise an objection to a matter in a preliminary decree if he was a party to the matter when the matter was previously litigated and resolved as the result of an objection raised in a temporary preliminary decree, unless the objection is allowed for any of the following reasons:*

*(i) mistake, inadvertence, surprise, or excusable neglect;*

*(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b) Montana Rules of Civil Procedure;*

*(iii) fraud, misrepresentation, or other misconduct of an adverse party;*

*(iv) the judgment is void; or*

*(v) any other reason justifying relief from the operation of the judgment.*

(2) If a hearing is requested, *the* request must be filed with the water judge within *180* days after entry of the *temporary preliminary decree or* preliminary decree. The water judge may, for good cause shown, extend this

time limit *up to two* additional *90-day periods* if application for *an* extension is made *prior to expiration of the original 180-day period or any extension of it.*

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the *temporary preliminary decree or* preliminary decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the *temporary preliminary decree or* preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

(5) Failure to object under subsection (1) to a compact negotiated and ratified under 85-2-702 or 85-2-703 bars any subsequent cause of action in the water court.

(6) If the court sustains an objection to a compact, it may declare the compact void. The agency of the United States, the tribe, or the United States on behalf of the tribe party to the compact shall be permitted 6 months after the court's determination to file a statement of claim, as provided in 85-2-224, and the court shall thereafter issue a new preliminary decree in accordance with 85-2-231; provided, however, that any party to a compact declared void may appeal from such determination in accordance with those procedures applicable to 85-2-235, and the filing of a notice of appeal shall stay the period for filing a statement of claim as required under this subsection."

Section 4. Section 85-2-235, MCA, is amended to read:

"**85-2-235. Appeals from final decree.** A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to *the temporary preliminary decree or* the preliminary decree; or

(2) his rights *or priorities* as determined in the *temporary preliminary decree or the* preliminary decree were *affected* as the result of *an objection filed* by another person."

Section 5. **Coordination instruction.** If Senate Bill No. 166 [LC 684] is not passed and approved, the bracketed language in [section 1 of this act] is void.

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this

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act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** [This act] is effective on the latest date on which any of the following occur:

(1) passage and approval of [this act], ____Bill No.____ [LC 684] or ____Bill No.____ [LC 686]; or

(2) a final determination of failure to receive passage and approval of ____Bill No.____ [LC 684] or ____Bill No.____ [LC 686].

Section 8. **Applicability.** [This act] applies to any temporary preliminary decree or preliminary decree issued on or after [the effective date of this act].

Approved April 21, 1989.

# CHAPTER NO. 606

[SB 271]

AN ACT REQUIRING A CITY OR TOWN TO LEVY A SPECIAL TAX FOR A FIRE DEPARTMENT RELIEF ASSOCIATION DISABILITY AND PENSION FUND WHEN THE FUND CONTAINS AN AMOUNT THAT IS LESS THAN 4 PERCENT, RATHER THAN 3 PERCENT, OF THE CITY'S OR TOWN'S TAXABLE VALUATION; AND AMENDING SECTIONS 19-11-503 AND 19-11-504, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-11-503, MCA, is amended to read:

**"19-11-503. Special tax levy for fund required.** (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to *4%* of the taxable valuation of all taxable property within the limits of the city or town.

(2) Whenever the fund contains less than *4%* of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-11-504. The special tax *must* be collected as other taxes are collected and, when so collected, *must* be paid into the disability and pension fund.

(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy."

Section 2. Section 19-11-504, MCA, is amended to read:

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**"19-11-504. Amount of special tax levy.** Whenever the fund contains an amount which is less than *4%* of the taxable valuation of all taxable property in the city or town, the city council shall levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town."

Approved April 21, 1989.

# CHAPTER NO. 607

[SB 297]

AN ACT ALLOWING LOCAL GOVERNMENT ENTITIES TO RESTRICT PUBLICATION OF AUDIT REPORTS TO A SUMMARY OF SIGNIFICANT FINDINGS AND A STATEMENT THAT THE REPORT IS ON FILE AND OPEN TO PUBLIC INSPECTION; AND AMENDING SECTION 2-7-521, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-7-521, MCA, is amended to read:

**"2-7-521. Publication.** (1) *(a)* Except as provided in subsection (3), after the expiration of the 30-day period provided for in 2-7-515(1), the department shall send a copy of the general comments section of each audit report to a newspaper of general circulation. However, the general comments section of each county audit report *must* be sent to the official newspaper of the county.

*(b) For an audit report of a local government entity provided for in 2-7-503(1)(a) or (1)(b), the department shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the auditing agency or firm and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.*

(2) *For an audit report of a local government entity provided for in 2-7-503(1)(a) or (1)(b), a newspaper is required to publish only:*

*(a) the summary of significant findings provided for in subsection (1)(b); and*

*(b)* a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) *For an* audit report of a local government entity *provided for in 2-7-503(1)(c) through (1)(h), the newspaper* is required to *publish* only the statement provided for in subsection (2)*(b)* and a statement providing that the audited government entity will send a copy of the audit report to any

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interested person upon request. A copy of the audit report must be sent to the newspaper publishing the *statements.*

(4) Publication costs *must* be borne by the audited governmental entity."

Approved April 21, 1989.

# CHAPTER NO. 608

[SB 341]

AN ACT AUTHORIZING THE REVENUE OVERSIGHT COMMITTEE TO ESTIMATE FOR THE LEGISLATURE THE AMOUNT OF REVENUE PROJECTED TO BE AVAILABLE FOR APPROPRIATION; REQUIRING THE REVENUE OVERSIGHT COMMITTEE TO INTRODUCE A HOUSE JOINT RESOLUTION SETTING FORTH THE COMMITTEE'S CURRENT REVENUE ESTIMATE; REQUIRING THE COMMITTEE TO ISSUE PERIODIC REPORTS TO THE LEGISLATURE INDICATING THE COMMITTEE'S CURRENT REVENUE ESTIMATE; AMENDING SECTIONS 5-11-112, 5-12-302, AND 5-18-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is not required for this bill but is included to clarify the staffing arrangements anticipated under this bill.

As a matter of practice, the legislative council has provided staff to support the work of the tax committees of the legislature in session and in the interim. As such, council staff have supported the revenue oversight committee since its creation. It is the intent of the legislature that, in carrying out its revenue estimating duties under this bill, the revenue oversight committee will rely upon the staffs of the legislative council, the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state. Legislative agencies shall cooperate in providing support to the committee.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 5-11-112, MCA, is amended to read:

**"5-11-112. Functional divisions.** The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule. The divisions shall include the following:

(1) legislative services division:

(a) engrossing and enrolling;

(b) mailroom;

(c) printing;

(2) research and reference services division:

(a) general and specialized legislative research;

(b) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage;

(c) committee staffing when the legislature is not in session, *including staffing for the revenue oversight committee*;

(3) legal services division:

(a) bill drafting;

(b) legal counseling;

(4) management and business services division, which shall:

(a) maintain bookkeeping records;

(b) sign claims and payrolls;

(c) order all printing, supplies, and equipment; and

(d) serve the house and senate during the session."

Section 2. Section 5-12-302, MCA, is amended to read:

**"5-12-302. Fiscal analyst's duties.** The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) make the reports and recommendations he deems desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;

(5) assist committees of the legislature and individual legislators in compiling and analyzing financial information; *and*

*(6) assist the revenue oversight committee in performing its revenue estimating duties under [section 3(5)].*"

Section 3. Section 5-18-107, MCA, is amended to read:

**"5-18-107. Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of**

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**revenue — committee reports — revenue estimating.** (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department of revenue whenever a rulemaking hearing will not be held in accordance with the provisions of 2-4-302 through 2-4-305;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

*(5) (a) The committee shall estimate the amount of revenue projected to be available for legislative appropriation.*

*(b) The committee shall introduce a house joint resolution setting forth the committee's current revenue estimate in each regular session and each special session in which a revenue bill is under consideration. The committee shall issue periodic reports to the legislature in regular session and in the interim between regular sessions, indicating the committee's current revenue estimate.*

*(c) The committee's introduced version of the joint resolution and subsequent periodic reports constitute the legislature's current revenue estimate until final adoption of the joint resolution by both houses.*

*(d) The committee may request the assistance of the staffs of the legislative council, the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.*"

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved April 21, 1989.

# CHAPTER NO. 609

[SB 356]

AN ACT TO EXPAND THE DEFINITION OF "VETERAN" TO INCLUDE MEMBERS OF THE FIRST SPECIAL SERVICE FORCE AND THE AMERICAN MERCHANT MARINE IN OCEANGOING SERVICE DURING THE PERIOD OF ARMED CONFLICT, DECEMBER 7, 1941, TO AUGUST 15, 1945; ALLOWING MEMBERS OF THE FORCE AND MERCHANT MARINES TO QUALIFY MILITARY SERVICE FOR FULL CREDIT IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND AMENDING SECTIONS 10-2-101, 10-2-401, 10-2-403, 10-2-501, AND 19-3-503, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 10-2-101, MCA, is amended to read:

**"10-2-101. Definitions.** Unless the context requires otherwise, in this *chapter the following definitions apply:*

*(1)* "board" means the board of veterans' affairs provided for in 2-15-1205*; and*

*(2) "veteran" means an honorably discharged individual who served on active duty, other than for training, with the United States armed forces. The term includes individuals who served with the first special service force and the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945."*

Section 2. Section 10-2-401, MCA, is amended to read:

**"10-2-401. Location and function of home — persons admitted.** The institution at Columbia Falls is the "Montana veterans' home" and as its primary function provides home and subsistence for veterans. The department of institutions may also admit spouses or surviving spouses of veterans to the home if space allows."

Section 3. Section 10-2-403, MCA, is amended to read:

**"10-2-403. Eligibility for residence in home.** To be eligible for residence in the Montana veterans' home under *rules* prescribed by the department of institutions, a person must be *a* veteran or the spouse or surviving spouse of a veteran. Consideration must also be given to:

(1) the person's age;

(2) the person's physical and mental status;

(3) the person's ability or inability to locate suitable alternative accommodations;

(4) the person's term of residence in Montana;

(5) the person's gender as it relates to availability of appropriate living space;

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(6) the ability of the Montana veterans' home to meet the person's needs; and

(7) other admission requirements established by the department."

Section 4. Section 10-2-501, MCA, is amended to read:

**"10-2-501. Burial allowance for military.** (1) The board of commissioners of each county in this state shall designate a person in the county, preferably *a veteran*, as veterans' burial supervisor.

(2) The veterans' burial supervisor shall cause to be decently interred the body of any *veteran* who is a resident of the state of Montana.

(3) *The* burial *may* not be made in any burial grounds or cemetery or in any portion of any burial grounds or cemetery used exclusively for the burial of pauper dead.

(4) A sum not to exceed $250 to defer burial *expenses must* be paid by the county commissioners of the county in which the *veteran* was *a* bona fide resident at the time of death.

(5) The *burial* benefits are not available in the case of any *veteran* whose executor, administrator, or heirs waive the benefits.

(6) Whenever burial is of a resident of the Montana veterans' home, a sum not to exceed $250 to defer burial expenses *must* be paid by the county commissioners of the county in which the *veteran* resided prior to admittance to the Montana veterans' home.

(7) If a *veteran* dies while temporarily absent from the state or county of residence, the provisions of this section apply and the burial expenses not exceeding the amount specified *in this section must* be paid in the same manner as provided *in this section.*

(8) Whenever a *veteran* dies at any public institution of the state of Montana, other than the Montana veterans' home, and burial for any cause is not made in the county of the former residence of the *veteran*, the officers of the state institution shall provide the proper burial prescribed *in this section.* The reimbursement for the expense of each burial may not exceed $250. The expense *must* be paid by the county in which the *veteran* resided at the time of entry into *the* institution.

(9) *A* burial may *not* be covered by any special or standing contract whereby the cost of burial is reduced below the maximum *amount* fixed *in this section*, to the disparagement of proper interment."

Section 5. Section 19-3-503, MCA, is amended to read:

**"19-3-503. Election to qualify military service for full credit.** (1) (a) A member with 10 years or more of state service qualified under this chapter may, at any time prior to retirement, make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States, *including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945,* for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not

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otherwise eligible to receive credit for this same service pursuant to 19-3-502.

(b) To qualify this service he must contribute to the retirement fund the amount determined by the board to be due based on his compensation and normal contribution rate as of his 11th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of this service than he has state service in excess of 10 years.

(2) If a member has retired from active duty in the armed forces of the United States, *including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945,* with a normal service retirement benefit, he may not qualify his military service under subsection (1) of this section. However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) of this section if his active duty in the armed forces of the United States, *including the first special service force or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945,* is not more than 25% of the total sum of all years of military service including reserve and active duty time."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Code commissioner instruction.** Whenever the terms "serviceman or servicewoman", "deceased person", "deceased", or "deceased's" appear in Title 10, chapter 2, part 5, the code commissioner shall change the term to "veteran" or "veteran's".

Approved April 21, 1989.

# CHAPTER NO. 610

[SB 357]

AN ACT TO CONTROL AND PREVENT THE SPREAD OF CONTAGIOUS POTATO DISEASES BY PROHIBITING THE IMPORTATION OR PLANTING OF NONCERTIFIED SEED POTATOES.

STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rulemaking authority to the department of agriculture. It is the intent of the legislature that the department adopt rules to implement the quarantine provision contained in [section 3] and the publication provision contained in [section 4]. These rules should include but are not limited to procedures for:

(1) notification to growers of the provisions of [this act];

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(2) inspection of imported seed potatoes, including the setting of inspection fees, if necessary;

(3) the quarantine of noncertified seed potatoes brought into the state;

(4) restrictions on the use of quarantined seed potatoes;

(5) disposition of the quarantined seed potatoes; and

(6) publication in counties where seed potatoes are grown of the prohibition on the planting of noncertified seed potatoes.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 5] may be cited as the "Seed Potato Disease Control Act".

Section 2. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Certified seed potatoes" means potato seed stock that has passed limited field and storage inspections and has been grown in accordance with the certification rules and regulations of an official seed potato certifying agency of the state or country of origin and certified as such.

(2) "Department" means the department of agriculture provided for in 2-15-3001.

(3) "Person" means an individual, firm, partnership, corporation, company, association, or separate business or legal entity.

(4) "Seed potatoes" or "potato seed" means all varieties of potato tubers, stems, and other plant parts of the herb plant known as Solanum tuberosum that are intended or used for seed purposes, planting, propagation, or reproduction.

Section 3. **Imported seed potatoes — restrictions — exceptions — quarantine.** (1) To control and prevent the spread of contagious diseases among seed potato stock:

(a) seed potatoes may not be imported into this state for any commercial or agricultural purpose unless the seed potatoes are:

(i) from seed stock produced as a part of a certified seed potato crop in the state or country of origin and certified as being from that stock;

(ii) inspected at the Montana receiving point by a federal or state-federal standard grade inspector;

(iii) shipped in a clean, disinfected container or transportation carrier; and

(iv) accompanied by a United States department of agriculture or state of origin certification of inspection describing the seed variety, seed class, standard grade, quality or condition, and seed source and have affixed to each inspection certificate an official state of origin seed potato certification tag or label; and

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(b) seed or commercial potatoes, equipment, machinery, bags, or containers known to be diseased or contaminated with bacterial ring rot, nematode, or tuber moth may not be brought into this state.

(2) The provisions of this section do not apply to any unit of the Montana university system when it is importing into this state potato seed for research or educational purposes.

(3) The department shall quarantine seed potatoes imported into the state in violation of [this section]. The department shall adopt rules governing quarantines and regulating the use or disposition of quarantined seed potatoes.

Section 4. **Planting noncertified seed potatoes prohibited in certain counties — restrictions — exceptions.** (1) To control and prevent the spread of contagious diseases and viruses among seed potato stock, it shall be unlawful after January 1, 1990, for any person to plant or produce potatoes, either seed or commercial, from any seed potato stock unless the seed potatoes are:

(a) from seed stock produced as a part of a certified seed potato crop in the state or country of origin and certified as being from that stock;

(b) inspected at the receiving point by a federal or state-federal standard grade inspector if from a source outside the county;

(c) shipped in a clean, disinfected container or transportation carrier; and

(d) for each individual lot of seed potatoes, accompanied by a United States department of agriculture or state of origin certificate of inspection describing the seed variety, seed class, standard grade, quality or condition, and seed source and have affixed to each inspection certificate an official state of origin seed potato certification tag or label.

(2) The provisions of this section apply only to counties where Montana certified seed potatoes are produced and certified by Montana state university during the preceding crop year as provided for in 80-5-301 through 80-5-305. On or before November 15 of each year, the department shall compile from official certification records at Montana state university a list of counties affected by this section and shall publish the provisions of this section throughout those counties.

(3) The provisions of this section do not apply to:

(a) potatoes grown in home gardens;

(b) potatoes grown by any unit of the Montana university system for research or educational purposes.

Section 5. **Enforcement — penalty.** (1) The department shall administer and enforce the provisions of [this act].

(2) Any person violating any provision of [this act] is guilty of a misdemeanor and upon conviction shall be punished as provided in 46-18-212.

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Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 21, 1989.

# CHAPTER NO. 611

[SB 363]

AN ACT ALLOWING PARTIES TO A CONTRACT FOR THE ACQUISITION OF REAL OR PERSONAL PROPERTY, SERVICES, OR MONEY OR CREDIT WHERE THE CONSIDERATION TO BE PAID BY THE INDIVIDUAL IS $5,000 OR LESS TO AGREE TO SUBMIT ANY FUTURE CONTRACTUAL DISPUTES TO ARBITRATION; CHANGING THE DOLLAR AMOUNT LIMITATION FOR CONTRACTS THAT MAY CONTAIN SUCH ARBITRATION AGREEMENTS; AND AMENDING SECTION 27-5-114, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 27-5-114, MCA, is amended to read:

**"27-5-114. Validity of arbitration agreement — exceptions.** (1) A written agreement to submit an existing controversy to arbitration is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract.

(2) A written agreement to submit to arbitration any controversy arising between the parties after the contract is made is valid and enforceable except upon such grounds as exist at law or in equity for the revocation of a contract. This subsection does not apply to:

(a) claims arising out of personal injury, whether based on contract or tort;

*(b) any contract by an individual for the acquisition of real or personal property, services, or money or credit where the total consideration to be paid or furnished by the individual is $5,000 or less;*

*(c)* any agreement concerning or relating to insurance policies or annuity contracts except for those contracts between insurance companies; *or*

(d) claims for workers' compensation.

(3) Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration."

Approved April 21, 1989.

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# CHAPTER NO. 612

[SB 379]

AN ACT CHANGING THE TAXATION OF 1-TON TRUCKS; INCLUDING THAT PORTION OF THE TAXABLE VALUE OF CARS AND TRUCKS HAVING A RATED CAPACITY OF MORE THAN THREE-QUARTERS OF A TON BUT LESS THAN OR EQUAL TO 1 TON IN THE TAXABLE VALUATION OF A COUNTY; AMENDING SECTIONS 7-1-2111, 15-6-139, AND 61-3-504, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-1-2111, MCA, is amended to read:

**"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having such a taxable valuation of $50 million or over;

(b) second class—all counties having such a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having such a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having such a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having such a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having such a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having such a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

*(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;*

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*(c)* the amount of interim production and new production taxes levied, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%; and

*(d)* the amount of value represented by new production exempted from tax as provided in 15-23-612."

Section 2. Section 15-6-139, MCA, is amended to read:

**"15-6-139. Class nine property — description — taxable percentage.** (1) Class nine property includes:

(a) buses and trucks having a rated capacity of more than *1* ton but less than or equal to 1 ½ tons;

(b) truck toppers weighing more than 300 pounds;

(c) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(d) x-ray and medical and dental equipment; and

(e) citizens' band radios and mobile telephones.

(2) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(3) Class nine property is taxed at 13% of its market value."

Section 3. Section 61-3-504, MCA, is amended to read:

**"61-3-504. Computation of tax.** (1) The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of *1* ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.

(2) The amount of tax on an automobile or truck having a rated capacity of *1* ton or less, except for vehicles owned by disabled veterans qualifying for special license plates under 61-3-451, and on a motorcycle or quadricycle is 2% of the value determined under 61-3-503.

(3) For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided therefor."

Section 4. **Coordination instruction.** If [this act] and House Bill No. 35 are both passed and approved, the amendment in [section 2 of this act] to 15-6-139 is void.

Section 5. **Applicability.** [This act] applies to taxable years beginning after December 31, 1989.

Approved April 21, 1989.

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# CHAPTER NO. 613

[SB 428]

AN ACT CREATING THE STATE COMPENSATION MUTUAL INSURANCE FUND TO INSURE EMPLOYERS FOR WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LIABILITY; PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING THE POWERS AND DUTIES OF THE BOARD AND THE CHIEF EXECUTIVE OFFICER OF THE STATE COMPENSATION MUTUAL INSURANCE FUND; TRANSFERRING THE OFFICE OF WORKERS' COMPENSATION JUDGE TO THE DEPARTMENT OF LABOR AND INDUSTRY; AMENDING SECTIONS 2-15-1014, 2-18-103, 19-3-1002, 19-3-1007, 19-3-1202, 19-13-601, 33-1-102, 33-2-119, 33-16-1005, 33-16-1011, 33-17-502, 33-18-212, 37-72-101, 39-1-103, 39-71-116, 39-71-201, 39-71-203, 39-71-206, 39-71-207, 39-71-306 THROUGH 39-71-308, 39-71-403, 39-71-421, 39-71-604, 39-71-704, 39-71-901, 39-71-908, 39-71-910, 39-71-911, 39-71-913, 39-71-2303, 39-71-2307, 39-71-2308, 39-71-2321 THROUGH 39-71-2323, 39-71-2325, 39-71-2327, 39-71-2501, 39-72-201, 39-72-310, 50-71-102, AND 50-73-102, MCA; REPEALING SECTIONS 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 THROUGH 39-21-2306, AND 39-71-2324, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 8] grants rulemaking authority to the newly created state fund to adopt or repeal rules or amend existing rules to implement the new state compensation mutual insurance fund. The chief purposes of creating the state fund as a mutual insurer and placing it in a department other than the department of labor are:

(1) to remove the inherent conflict between the interests of the workers' compensation division in regulating all workers' compensation insurers in this state, including the state compensation insurance fund, and the interests of the state fund as a workers' compensation insurer; and

(2) to ensure the solvency of the new state fund.

The legislature recognizes that the fund actuary has determined that at June 30, 1988, a full funding deficiency of $157.3 million existed for the present state compensation insurance fund. The legislature intends that the new state compensation mutual insurance fund adopt rules in a manner that will assure the solvency of the new fund. Rates must be set on an actuarially sound basis as required by state law. The new state fund would be bound to insure all employers who apply to it for workers' compensation coverage and shall insure state agencies.

As the primary means of ensuring the solvency of the state fund, it must institute safety programs and set rates in a manner that awards employers who provide a safe working environment and penalizes employers who do not.

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The legislature further intends that the new state fund institute programs to automate the processing of claims and payment of benefits. The state fund may contract out to the private sector certain claims administration and servicing functions if the state fund determines it to be cost-effective.

The legislature intends that the governor shall implement staggered terms in naming the initial members of the board.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Intent and purpose of plan.** It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan is established under [section 12] and is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves. For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record.

Section 2. **Definitions.** Unless the context requires otherwise, in [sections 1, 2, and 4 through 11] the following definitions apply:

(1) "Board" means the board of directors of the state compensation mutual insurance fund provided for in [section 3].

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive officer of the state compensation mutual insurance fund.

(4) "State fund" means the state compensation mutual insurance fund provided for in [section 4]. It is also known as compensation plan No. 3 or plan No. 3.

Section 3. **Board of directors of the state compensation mutual insurance fund.** (1) There is a board of directors of the state compensation mutual insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of five members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

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(5) At least three of the five members shall represent state fund policyholders and may be employees of state fund policyholders. At least three members of the board shall represent private, for-profit enterprises. A member of the board may not:

(a) represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply.

Section 4. **State compensation mutual insurance fund created.** There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. The state fund exists as a domestic mutual insurer as defined in 33-3-102.

Section 5. **Management of state fund — powers and duties of the board.** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of [sections 1, 2, and 4 through 11], as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of [sections 1, 2, and 4 through 11].

Section 6. **Personal liability excluded.** The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

Section 7. **Appointment of executive director — management staff.** The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

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Section 8. **Powers of the state fund — rulemaking.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated and adequate actuarially determined reserves are determined.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund.

Section 9. **Property of the state fund — investment required.** All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

Section 10. **State fund a mutual insurance carrier.** (1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1.

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(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of [sections 1, 2, and 4 through 11].

(3) If an assigned risk plan is established and administered pursuant to [section 12], the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

Section 11. **Assets and liabilities of prior state fund.** All assets and funds held by the state compensation insurance fund established in 39-71-2301 through 39-71-2308 and 39-71-2321 through 39-71-2327 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

Section 12. **Assigned risk plan.** (1) Following the date on which the provisions of [this act] are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation insurance policies in this state.

(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage.

Section 13. Section 39-71-116, MCA, is amended to read:

**"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

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(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the *department* prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

*(7)* "Fiscal year" means the period of time between July 1 and the succeeding June 30.

*(8)* "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

*(9)* "Invalid" means one who is physically or mentally incapacitated.

*(10)* "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

*(11)* "Order" means any decision, rule, direction, requirement, or standard of the *department* or any other determination arrived at or decision made by the *department*.

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*(12)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the *department* for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the *department*, as the case may actually be, on December 31 of such current year.

*(13)* "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

*(14)* "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

*(15)* The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

*(16)* The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

*(17)* "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

*(18)* "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

*(19)* "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

*(20)* "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

*(21)* "Year", unless otherwise specified, means calendar year."

Section 14. Section 39-71-201, MCA, is amended to read:

**"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the *department* must administer are to be paid

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upon lawful appropriation. The following *money* collected by the *department must* be deposited in the state treasury to the credit of the workers' compensation administrative fund and *must* be used for the administrative expenses of the *department*:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments *must* be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer *may* be less than $200. The assessments *must* be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 *must* be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, *must* be used to reduce the costs before levying the assessments.

(2) The administration fund *must* be debited with expenses incurred by the *department* in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the *department* either within or without the state.

(3) Disbursements from the administration money *must* be made after being approved by the *department* upon claim therefor."

Section 15. Section 39-71-203, MCA, is amended to read:

**"39-71-203. Powers of department — rules.** (1) The *department* is hereby vested with full power, authority, and jurisdiction to do and perform any and all things that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The *department* may adopt rules to carry out the provisions of this chapter."

Section 16. Section 39-71-206, MCA, is amended to read:

**"39-71-206. Legal advisers of department and state fund.** The attorney general *is* the legal adviser of the *department and the state fund* and shall represent *either entity* in all proceedings *if* requested by the *department* or *state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.*"

Section 17. Section 39-71-306, MCA, is amended to read:

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**"39-71-306. Insurers to file summary reports of benefits paid for injuries and statements of medical expenditures.** Every *insurer* shall, on or before the 15th day of each and every month, file with the *department*:

(1) *summary reports of benefits* for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers."

Section 18. Section 39-71-307, MCA, is amended to read:

**"39-71-307. Employers and insurers to file reports of accidents.** (1) Every employer and every insurer is required to file with the *department*, under *department* rules, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to *the employee. The* reports *must* be furnished to the *department* in *the* form and detail as the *department prescribes* and *must provide* specific answers to all questions required by the *department* under its rules. *However, if an employer* is unable to answer *a question, he shall state the reason he is unable to answer.*

(2) Every *insurer* transacting business under this chapter shall, at the time and in the manner prescribed by the *department*, make and file with the *department the* reports of accidents as the *department requires.*"

Section 19. Section 39-71-308, MCA, is amended to read:

**"39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by department.** *If a* public corporation insured by the state fund neglects or refuses to file prescribed payroll reports of its employees, the *department* may levy an arbitrary assessment upon *the* public corporation in an amount of $75 for each assessment. *The assessment must* be collected in the manner provided in this chapter for the collection of assessments."

Section 20. Section 39-71-403, MCA, is amended to read:

**"39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations.** (1) *If* a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, *state fund, are* exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency *are* considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay *the* sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No.

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1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (3) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund."

Section 21. Section 39-71-421, MCA, is amended to read:

**"39-71-421. Financial incentives to institute safety programs.** *Insurers* may provide financial incentives to an employer who implements a formal safety program. *An insurer* may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program."

Section 22. Section 39-71-604, MCA, is amended to read:

**"39-71-604. Application for compensation.** (1) *If* a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the *department* all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the *department* without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) *If* death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the *department*. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the *department*."

Section 23. Section 39-71-704, MCA, is amended to read:

**"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following *must* be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the *department* for the injuries sustained.

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(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, *must* be established annually by the *department* and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. *The state fund shall report fees billed in the form and at the times required by the department.* The *department* shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules *must* be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the *department* shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The *department* may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

Section 24. Section 39-71-901, MCA, is amended to read:

**"39-71-901. Definitions.** As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the *department* to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund."

Section 25. Section 39-71-908, MCA, is amended to read:

**"39-71-908. Notification of fund of its potential liability under part — review by fund.** Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the *insurer* shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may

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review, at reasonable times, such information as the *insurer* has regarding the accident and the nature and extent of the injury and disability."

Section 26. Section 39-71-910, MCA, is amended to read:

**"39-71-910. Procedure for resolving disputes as to liability under part.** (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the *department* shall hold a hearing and resolve all disputes. On motion made in writing by the *insurer*, the administrator shall join the fund as a party defendant.

(2) The *department*, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the *names* of the employee and the *insurer* and the date of the alleged injury or disability. The fund named as a defendant *has* 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the *insurer* and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the *insurer* to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the *insurer* and the fund."

Section 27. Section 39-71-911, MCA, is amended to read:

**"39-71-911. Obligation to make payments on behalf of fund not an independent liability.** The obligation imposed by this part on the *insurer* to make payments on behalf of the fund does not impose an independent liability on the *insurer*."

Section 28. Section 39-71-913, MCA, is amended to read:

**"39-71-913. Payments by fund directly to persons entitled.** If the *insurer* does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments."

Section 29. Section 39-71-2303, MCA, is amended to read:

**"39-71-2303. Manner of electing — contract or policy of insurance — payment of premium.** The *state fund* shall prescribe the procedure by which *an employer* may elect to be bound by compensation plan No. 3, the effective time of *the* election, and the manner in which *the* election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 *must* receive from the *state fund* a contract or policy of insurance in a form approved by the *department*. The premium *must* be paid by the employer to the *state fund* at such times as the *state fund prescribes* and *must* be

paid over by the *state fund* to the state treasurer to the credit of the *state* fund."

Section 30. Section 39-71-2307, MCA, is amended to read:

**"39-71-2307. Cancellation of coverage — thirty days' notice required.** The *state fund may* cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due. When the *state fund cancels* an employer's *coverage, it* shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer *has* the same status as an employer who is not enrolled under the Workers' Compensation Act."

Section 31. Section 39-71-2308, MCA, is amended to read:

**"39-71-2308. Collection in case of default.** (1) If *an* employer under plan No. 3 *defaults* in any payment to the *state fund*, the *state fund may collect the* sum due *in a civil action* in the name of the state. *The right of action is* cumulative.

(2) *If* an employer's right to operate has been canceled by the *state fund* for failure to pay premiums and *the state fund* finds that the property and assets of the employer are not sufficient to pay the premiums, the *state fund* may compromise the claim for premiums and accept a payment of an amount less than the total amount due."

Section 32. Section 39-71-2321, MCA, is amended to read:

**"39-71-2321. What to be deposited in state fund.** All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the *state* fund, and securities acquired by or through use of money *must* be deposited in the *state* fund."

Section 33. Section 39-71-2322, MCA, is amended to read:

**"39-71-2322. Money in state fund held in trust — disposition of funds upon repeal of chapter.** The *money* coming into the *state* fund *must* be held in trust for the purpose for which *the money was* collected. *If this chapter is* repealed, *the money is* subject to *the* disposition provided by the legislature repealing this chapter. In *the absence of a* legislative provision, distribution *must* be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing."

Section 34. Section 39-71-2323, MCA, is amended to read:

**"39-71-2323. Surplus in state fund — payment of dividends.** If at the end of any fiscal year there exists in the *state* fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the *state fund* may declare a dividend in *the* manner as the rules of the *state fund* prescribe to those employers who have paid premiums into the *state* fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the *state fund* shall give consideration to the prior

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paid premiums and accident experience of each individual employer during the dividend year."

Section 35. Section 39-71-2325, MCA, is amended to read:

**"39-71-2325. State fund to keep accounts of segregations.** The *state fund* shall keep an accurate account of all *the* segregations of the *state* fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security."

Section 36. Section 39-71-2327, MCA, is amended to read:

**"39-71-2327. Earnings of state fund to be credited to fund — improper use a felony.** All earnings made by the *state* fund by reason of interest paid for the deposit thereof or otherwise *must* be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund *is* a felony. *A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both.*"

Section 37. Section 39-72-201, MCA, is amended to read:

**"39-72-201. Administration of chapter.** This chapter *is* administered by the *department.*"

Section 38. Section 39-72-310, MCA, is amended to read:

**"39-72-310. Occupational disease coverage under workers' compensation plans.** (1) Every employer enrolled under compensation plan No. 1, every insurer under compensation plan No. 2, and the state fund under compensation plan No. 3, all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the *department* shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the *state fund* for occupational disease insurance coverage *must* be transferred *to* the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund *must* be paid out of the industrial insurance account."

Section 39. Section 2-18-103, MCA, is amended to read:

**"2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

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(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery; *and*

*(14) executive director and employees of the state compensation mutual insurance fund.*"

Section 40. Section 33-17-502, MCA, is amended to read:

"**33-17-502. Prohibition on holding out as consultant — receiving fee.** (1) Any person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or any person who uses any other designation or title which is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) Any person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives any fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who shall make recommendations or give advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity; *or*

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(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services."

Section 41. Section 33-18-212, MCA, is amended to read:

**"33-18-212. Illegal dealing in premiums — improper charges for insurance.** (1) *A* person *may not* willfully collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided (subject to acceptance of the risk by the insurer) by an insurance policy issued by an insurer as authorized by this code.

(2) *A* person *may not* willfully collect as premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance and, as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or in cases where classifications, premiums, or rates are not required by this code to be so filed and approved, such premiums and charges *may* not be in excess of or less than those specified in the policy and as fixed by the insurer. This provision *may* not be deemed to prohibit the charging and collection, by surplus lines agents licensed under chapter 2, part 3, of the amount of applicable state and federal taxes in addition to the premium required by the insurer. It *may* not be *considered* to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

(3) Each violation of this section *is* punishable under 33-1-104."

Section 42. Section 2-15-1014, MCA, is amended to read:

**"2-15-1014. Office of workers' compensation judge — allocation — appointment — salary.** (1) There is the office of workers' compensation judge. The office is allocated to the department of *labor and industry* for administrative purposes only as prescribed in 2-15-121.

(2) The governor shall appoint the workers' compensation judge for a term of 6 years in the same manner provided by Title 3, chapter 1, part 10, for the appointment of supreme or district court judges. A vacancy *must* be filled in the same manner as the original appointment.

(3) To be eligible for workers' compensation judge, a person must:

(a) have the qualifications necessary for district court judges found in Article VII, section 9, of the Montana constitution;

(b) devote full time to the duties of workers' compensation judge and not engage in the private practice of law.

(4) The workers' compensation judge is entitled to the same salary and other emoluments as that of a district judge but *must* be accorded retirement benefits under the public employees' retirement system."

Section 43. Section 39-71-2501, MCA, is amended to read:

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**"39-71-2501. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of examiners created in 2-15-1007.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Employer" has the meaning set forth in 39-71-117.

(4) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(5) "State fund" means the state compensation *mutual* insurance fund.

(6) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504. **(Terminates June 30, 1991—sec. 10, Ch. 664, L. 1987.)"**

Section 44. **State fund to submit notice of coverage within thirty days — penalty for failure.** (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires.

(2) The department may assess a penalty of no more than $200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement.

Section 45. **Policy remains in effect until canceled or replaced — twenty-day notification of cancellation required.** The insurance policy remains in effect until canceled. Cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. Nothing in this section prevents the state fund from canceling an insurance policy before a replacement policy is issued to the insured.

Section 46. Section 33-2-119, MCA, is amended to read:

**"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

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(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders;

*(c) failed to accept an equitable apportionment of assigned coverage as required by [section 12].*

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay proper claims arising under its policies, whether any such claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person, or without just cause compels such insured or claimant to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 47. Section 37-72-101, MCA, is amended to read:

**"37-72-101. Construction blasting restrictions — license required — definitions — exemptions.** (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the *department.*

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) *"department" means the department of labor and industry;*

(d) "explosive" has the meaning given in 50-38-101;

(e) "magazine" has the meaning given in 50-38-101.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e)."

Section 48. Section 50-71-102, MCA, is amended to read:

**"50-71-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the *department* under the provisions of this chapter.

(3) *"Department" means the department of labor and industry.*

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

Section 49. Section 50-73-102, MCA, is amended to read:

**"50-73-102. Definitions.** As used in this chapter, the following definitions apply:

(1) *"Department" means the department of labor and industry* and the state coal mine inspectors employed by the *department.*

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

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(3) "Gassy mine" means a mine is considered to be potentially gassy. The *department* may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft."

Section 50. Section 39-1-103, MCA, is amended to read:

**"39-1-103. Powers of department.** (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

*(3)* Nothing in this chapter applies to labor violations preempted by federal law or regulation."

Section 51. Section 39-71-207, MCA, is amended to read:

**"39-71-207. Merit system.** Employees of the *department* are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation."

Section 52. Section 33-1-102, MCA, is amended to read:

**"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs.** (1) No person shall transact a business of

insurance in Montana or relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) No provision of this code shall apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of such corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations to the extent that the existence and operations of such organizations are authorized by chapter 31.

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, *part* 21, and related sections.

(6) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(7) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(8) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state whereby the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state whereby the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 53. Section 33-16-1005, MCA, is amended to read:

**"33-16-1005. Membership in rating organization required — exception — filings with commissioner.** (1) Every insurer, *including the state compensation mutual insurance fund*, writing workers' compensation insurance in this state shall be a member of a workers' compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan No. 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member

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and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

Section 54. Section 33-16-1011, MCA, is amended to read:

**"33-16-1011. Classification and rating committee — membership — term.** (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) three representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must reside in Montana and shall be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance agent who resides in Montana, appointed by the Montana commissioner of insurance; and

(c) one representative of the *state compensation mutual insurance fund* who is an employee of the *state fund* and who *is* appointed by the *executive director of the state fund.*

(3) Each member shall hold office for a period of 3 years. Any appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a) and (2)(b) above, established private organizations representing insurance carriers and independent insurance agents may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to such names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee shall be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses."

Section 55. Section 19-3-1007, MCA, is amended to read:

**"19-3-1007. Allowance for duty-related disability.** (1) The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of his final compensation. However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded workers' compensation, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

Section 56. Section 19-3-1002, MCA, is amended to read:

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**"19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsection (2) and 19-3-1004, a member who is not eligible for service or early retirement but has completed 5 years of creditable service and has become disabled while in active service, as defined in 19-3-1001, is eligible for disability retirement.

(2) A member age 60 or older who has completed 5 years of creditable service and has had a duty-related accident forcing him to terminate his employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive his eligibility for a service retirement to be eligible for disability retirement. The waiver is effective only upon approval by the board of his application for disability retirement. The board shall determine whether a member has become disabled under the provisions of 19-3-1003. The board may request any information on file with the *state compensation mutual insurance fund* concerning the duty-related accident. If no information is available, the board may request and the *state fund* shall provide an investigative report on the disabling accident."

Section 57. Section 19-3-1202, MCA, is amended to read:

**"19-3-1202. Amount of death benefit.** The amount of death benefit is the sum of (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of such compensation multiplied by the smaller of six or the number of years of his creditable service; provided, however, that this portion of the death benefit is not payable if the board receives a certification from the *state compensation mutual insurance fund* that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment; and

(3) the accumulated interest on the amounts in subsections (1) and (2) of this section to the first day of the month in which the benefit is paid."

Section 58. Section 19-13-601, MCA, is amended to read:

**"19-13-601. Deduction remitted to firemen's association — member's contributions.** (1) Each employer shall retain from the monthly compensation of each active member a sum equal to 1% of his monthly compensation for his services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the plan.

(2) The member's contribution to the retirement system for each active member is 6% of his monthly compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of his monthly compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under this section, 19-13-604, and 19-13-605 must be

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based on the total compensation received by the member from his employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions which would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's monthly compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 59. **Repealer.** Sections 2-15-1702, 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324, MCA, are repealed.

Section 60. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 61. **Codification instruction.** (1) [Sections 1, 2, 4 through 11, 44, and 45] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1, 2, 4 through 11, 44, and 45].

(2) [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 10, and the provisions of Title 2, chapter 15, part 10, apply to [section 3].

(3) [Section 12] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 12].

Section 62. **Reorganization procedure.** (1) The provisions of sections 2-15-132 through 2-15-137 govern the creation of the state compensation mutual insurance fund and the transfer of the various functions contained in [this act] from the state compensation insurance fund to the state compensation mutual insurance fund.

(2) It is intended that current employees of the division of workers' compensation whose functions are transferred to the state compensation mutual insurance fund shall retain employment rights consistent with their positions at the time of transfer.

Section 63. **Implementation.** (1) The governor shall by executive order implement the provisions of [this act].

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(2) The governor may by executive order assign to the state compensation mutual insurance fund, in a manner consistent with [this act], functions allocated to the workers' compensation state fund provided for in Title 39, chapter 71, part 23, by the 51st legislature and not transferred by [this act].

Section 64. **Name change — code commissioner instruction.** (1) In the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division", meaning the division of workers' compensation, are changed to "department of labor and industry" or "department", meaning the "department of labor and industry".

(2) The code commissioner shall designate, in a manner consistent with [this act], workers' compensation insurance regulatory functions allocated to the division of workers' compensation by the 51st legislature to the department of labor and industry that are not so designated by [this act].

(3) Wherever it appears in 39-71-205, 39-71-222 through 39-71-224, 39-71-613, 39-71-902, 39-71-904, 39-71-910, or in law enacted by the 51st legislature, the code commissioner is directed to change the term "administrator" or "his" to "department", meaning the department of labor and industry.

Section 65. **Effective dates.** (1) [Sections 3, 7, 39, 60 through 64, and this section] are effective on passage and approval.

(2) [Sections 1, 2, 4 through 6, 8 through 38, and 40 through 59] are effective upon signing of the executive order under [section 63] or on January 1, 1990, whichever occurs earlier.

Approved April 21, 1989.

# CHAPTER NO. 614

[SB 437]

THE AIDS PREVENTION ACT; MANDATING THAT HIV ANTIBODY TESTING BE ADMINISTERED ONLY IN CONJUNCTION WITH ADEQUATE PRETEST AND POSTTEST COUNSELING; REQUIRING INFORMED CONSENT FOR HIV ANTIBODY TESTING; PROVIDING FOR CONFIDENTIALITY OF HIV TEST RESULTS IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THE UNIFORM HEALTH CARE INFORMATION ACT; AND REQUIRING HIV ANTIBODY TESTING OF DONORS OF SEMEN AND HUMAN BODY PARTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 7] may be cited as the "AIDS Prevention Act".

Section 2. **Statement of purpose.** (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related

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medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

Section 3. **Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "AIDS" means acquired immunodeficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes.

(3) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(4) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(5) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(6) "HIV-related test" means a laboratory test, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(7) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(8) "Health care provider" means a physician, nurse, paramedic, psychologist, dentist, public health department agent, or other person providing medical, nursing, psychological, or other health care services of any kind.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Person" means an individual, corporation, organization, or other legal entity.

(11) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes written materials provided by the department.

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(12) "Pretest counseling" means the provision of written materials to the subject prior to conduct of an HIV test. The written materials must be developed and provided by the department.

(13) "Release of test results" means a written authorization for disclosure of HIV-related test results that is signed and dated and that specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(14) (a) "Written informed consent" means an agreement in writing freely executed by the subject of an HIV-related test or the subject's legal guardian that includes at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results; and

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time;

(iii) a discussion of whether and to whom the subject's name and test results may be disclosed; and

(iv) a statement that the test may be obtained anonymously if the subject wishes.

(b) The department shall develop a form agreement that may be used for purposes of this subsection.

Section 4. **Testing — counseling — informed consent — penalty.** (1) A person may not request an HIV-related test without first receiving the written informed consent of the subject of the test or the subject's legal guardian. A health care provider shall certify in writing that informed consent has been received prior to requesting testing. Testing may only be requested by a health care provider.

(2) Prior to executing an informed consent agreement, the subject of the test or the subject's legal guardian must be given pretest counseling.

(3) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform a person who wishes to be tested anonymously that anonymous testing is available at one of the counseling testing sites established by the department.

(4) The results of an HIV-related test must be given to the health care provider designated by the subject, who shall inform the subject of the results in person.

(5) At the time the subject of a test is given the test results, the subject must be provided with posttest counseling.

(6) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(7) Subsections (1) through (5) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human

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body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

(8) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both.

Section 5. **Testing of donors of organs, tissues, and semen required — penalty.** (1) Immediately prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both.

Section 6. **Confidentiality of records.** (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons with whom there has been a contact capable of spreading HIV. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

Section 7. **Civil remedy.** (1) A person aggrieved by a violation of [sections 1 through 7] has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of [sections 1 through 7], damages of $1,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of [sections 1 through 7], damages of $5,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

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(3) The department may maintain a civil action to enforce [sections 1 through 7] in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in [sections 1 through 7] may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 21, 1989.

# CHAPTER NO. 615

[SB 461]

AN ACT PROVIDING FOR THE PRORATION OF TAXES ON PERSONAL PROPERTY BROUGHT INTO THE STATE; AMENDING SECTIONS 15-24-101 AND 15-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-24-101, MCA, is amended to read:

**"15-24-101. Assessment of proportionally registered interstate motor vehicle fleets — tax payment required for registration.** (1) The department of revenue shall assess, for the purpose of personal property taxes, the taxable vehicles in interstate motor vehicle fleets proportionally registered under the provisions of 61-3-711 through 61-3-733, and the assessment *must* be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by 61-3-721. Interstate motor vehicle fleets are assessable for taxation purposes upon application for proportional registration and are assessed to the persons who own or claim or in whose possession or control the fleet is at the time of the application.

(2) With respect to any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this part or any other provision of the laws of Montana, the taxes on taxable vehicles are apportioned as provided in 15-24-303.

(3) With respect to any fleet contained in a renewal application, the taxable vehicles are assessed and taxed for a full year.

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(4) Automobiles and trucks having a rated capacity of three-quarters of a ton or less that are part of an interstate motor vehicle fleet are subject to property tax. If the fleet is proportionally registered, the tax is apportioned in the same fashion as the registration fee under 61-3-721.

(5) Vehicles contained in a fleet for which current taxes, fees, or both have been assessed and paid *may* not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes, or fees, or both for the current registration year. The payment of personal property taxes, fees, or both, is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet."

Section 2. Section 15-24-303, MCA, is amended to read:

**"15-24-303. Proration of tax on personal property.** *The tax on* personal property brought, driven, or *coming* into any county after the assessment date *must* be prorated according to the ratio which the *remaining* number of months in the *year* bears to the total number of months in *the* year."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved April 21, 1989.

# CHAPTER NO. 616

[HB 304]

AN ACT TO ESTABLISH A 2-YEAR PILOT PROJECT FOR MEDICAID REIMBURSEMENT OF INPATIENT PSYCHIATRIC SERVICES IN A RESIDENTIAL TREATMENT FACILITY; TO DEFINE "RESIDENTIAL TREATMENT FACILITY"; TO PROVIDE INPATIENT PSYCHIATRIC SERVICES TO PERSONS UNDER 21 YEARS OF AGE IN A RESIDENTIAL TREATMENT FACILITY; TO REQUIRE A CERTIFICATE OF NEED FOR RESIDENTIAL TREATMENT FACILITIES; TO APPROPRIATE FUNDS; AMENDING SECTIONS 41-5-523 AND 50-5-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION PROVISION.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-5-101, MCA, is amended to read:

**"50-5-101. (Effective July 1, 1989) Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

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(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(4) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(5) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(6) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(7) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(8) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(9) "Federal acts" means federal statutes for the construction of health care facilities.

(10) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(11) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, *residential treatment facilities,* and adult day-care centers.

(12) "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on

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a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(13) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(14) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(15) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(16) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(17) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(18) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(19) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 53-5-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for physically disabled persons licensed under 53-19-111, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of institutions.

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(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(20) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(21) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(22) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(23) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(24) "Offer" means the holding out by a health care facility that it can provide specific health services.

(25) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(26) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(27) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(28) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(29) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological

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and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(30) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

*(31) "Residential treatment facility" means a facility of not less than 30 beds that is operated by a nonprofit corporation or association for the primary purpose of providing long-term treatment services for mental illness in a nonhospital-based residential setting to persons under 21 years of age.*

*(32)* "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 2. **Residential treatment services.** (1) The definition of medical assistance contained in 53-6-101 may include inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility as defined in 50-5-101(31) and that is accredited by the joint commission on accreditation of health care organizations.

(2) To the extent allowed by federal law, the department shall by rule limit eligibility for medicaid reimbursement for residential treatment facility services to those persons under 18 years of age committed to the department of family services by a youth court under 41-5-523 or placed in the legal custody of the department of family services under 41-3-406.

Section 3. **Certificate of need for residential treatment facility.** A person may not operate a residential treatment facility unless he has obtained a certificate of need issued by the department as provided under this part.

Section 4. **Study of residential treatment facility needs — authorization for change of use — licensing of existing facilities.** (1) In order to determine the need for services provided by a residential treatment facility, the department, together with the department of family services and the department of social and rehabilitation services, shall:

(a) conduct a review of the need for services provided by the residential treatment facility. The review must include a determination of:

(i) the number of persons between 5 and 21 years of age who:

(A) suffer from mental illness in this state; and

(B) are placed in out-of-state facilities by the department of family services and Montana school districts;

(ii) the appropriate levels of care or treatment for the persons described in subsection (1)(a)(i); and

(iii) the potential number of persons described in subsection (1)(a)(i) eligible for reimbursement of inpatient psychiatric services under 53-6-101;

(b) develop an appropriate methodology for determining the need for residential treatment facility services and beds; and

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(c) report their findings to the 52nd legislature.

(2) Except as provided in subsection (3), the department may not issue a certificate of need for a new residential treatment facility or for any change in the capacity of an existing facility seeking a certificate of need as a residential treatment facility until after October 1, 1991.

(3) A person who operates an existing facility that meets the definition of a residential treatment facility on January 1, 1989, may receive a license to operate the facility as a residential treatment facility and need not obtain a certificate of need as otherwise required under [section 3].

Section 5. Section 41-5-523, MCA, is amended to read:

**"41-5-523. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department. The department shall thereafter determine the appropriate placement, supervision, and rehabilitation program for the youth after considering the recommendation of the youth placement committee as provided in 41-5-527; provided, however, that:

(i) in the case of a youth in need of supervision, such commitment does not authorize the department to place the youth in a state youth correctional facility. The court shall determine whether continuation in the home would be contrary to the welfare of the child and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is a serious juvenile offender, the judge may specify that the youth be placed in physical confinement in an appropriate facility only if the judge finds that such confinement is necessary for the protection of the public;

(iii) a youth may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(iv) a youth is under the supervision of a youth probation officer, except that a youth placed in a youth correctional facility is supervised by the department;

(c) order such further care and treatment or evaluation that does not obligate funding from the department without the department's approval, *except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.*

(d) order restitution by the youth or his parents;

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(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(f) require the performance of community service;

(g) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(h) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(i) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate; or

(j) such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(5) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(6) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(7) The order of commitment to the department shall read as follows:

ORDER OF COMMITMENT

State of Montana )
) ss.
County of ..... )

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ...., a minor of this county, .... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of family services.

It is ordered that .... be committed to the department of family services until .....

The names, addresses, and occupations of the parents are:

| Name | Address | Occupation |
|---|---|---|
| ..... | ..... | ..... |
| ..... | ..... | ..... |

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this .... day of ...., A.D. 19...

.....
Judge"

Section 6. **Appropriation.** The following money is appropriated to the department of social and rehabilitation services to provide inpatient psychiatric services for persons under 21 years of age, as provided in [section 2]:

| Fund | FY 90 | FY 91 |
|---|---|---|
| General fund | $17,027 | $17,027 |
| Federal special revenue | 51,080 | 51,080 |
| Total | $68,107 | $68,107 |

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 2].

(2) [Sections 3 and 4] are intended to be codified as an integral part of Title 50, chapter 5, part 3, and the provisions of Title 50, chapter 5, part 3, apply to [sections 3 and 4].

Section 9. **Effective date — termination.** (1) [This act] is effective July 1, 1989.

(2) [Section 2] terminates July 1, 1991.

Approved April 22, 1989.

# CHAPTER NO. 617

[HB 690]

AN ACT PROVIDING FOR DEDUCTION FROM THE TAXABLE VALUE OF A TITLE INSURER OR A TITLE AGENT THE VALUE OF ITS TITLE PLANT; DISALLOWING DEPRECIATION OR AMORTIZATION OF THE TITLE PLANT; AMENDING SECTIONS 15-6-201, 15-24-602, 15-30-111, AND 15-31-114, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-201, MCA, is amended to read:

**"15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

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(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) institutions of purely public charity;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public art galleries and public observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. Such property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

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(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

*(r) a title plant owned by a title insurer or a title agent, as those terms are defined in 33-25-105.*

(2) (a) The term "institutions of purely public charity" includes organizations owning and operating facilities for the care of the retired or aged or chronically ill, which are not operated for gain or profit.

(b) The terms "public art galleries" and "public observatories" include only those art galleries and observatories, whether of public or private ownership, that are open to the public without charge at all reasonable hours and are used for the purpose of education only.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure. **(Subsection (1)(c) applicable to taxable years beginning after December 31, 1987—sec. 4, Ch. 455, L. 1987.)**"

Section 2. Section 15-24-602, MCA, is amended to read:

"**15-24-602. Determining insurance company taxable property.** In computing the taxable property of insurance companies organized under the laws of *Montana*, there *must* be deducted therefrom:

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(1) the value of the real property on which the company pays taxes, *if the* real estate *is* assessed to the company as other real estate;

(2) the legal reserve required by the laws of *Montana* or by the insurance department *of Montana* for the protection of policyholders;

(3) all assets not admitted as such by the state or by the insurance department *of Montana*;

(4) debts and liabilities as may be due or owing by *the* company*; and*

*(5) the value of a title plant owned by a title insurer or a title agent, as those terms are defined in 33-25-105.*"

Section 3. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income*; and*

*(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).*

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954 as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) all benefits, not in excess of $3,600, received:

(i) under the Federal Employees' Retirement Act;

(ii) under the public employee retirement laws of a state other than Montana; or

(iii) as an annuity, pension, or endowment under any private or corporate retirement plan or system;

(d) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(e) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(f) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(g) all Montana income tax refunds or credits thereof;

(h) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans or specified as exempt from taxation by 19-13-1003;

(i) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005;

(j) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(k) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(l) all benefits received under the workers' compensation laws;

(m) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

(n) all benefits paid under an optional retirement program that are specified as exempt from taxation by 19-21-212.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect.

(4) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in his adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of such wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or

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small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(8) A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c) from adjusted gross income unless the benefits received under subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than $3,600, in which case the person may combine benefits to exclude up to a total of $3,600 from adjusted gross income. **(Subsection (2)(k) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"**

Section 4. Section 15-31-114, MCA, is amended to read:

**"15-31-114. Deductions allowed in computing income.** In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade

or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made. *No depreciation or amortization deduction shall be allowed on a title plant as defined in 33-25-105(15).*

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(C) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(iii) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses

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sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(vi) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

(4) The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this part.

(5) (a) Taxes paid within the year, except the following:

(i) Taxes imposed by this part.

(ii) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(iii) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(iv) Taxes imposed by any other state or country upon or measured by net income or profits.

(b) Taxes deductible under this part shall be construed to include taxes imposed by any county, school district, or municipality of this state.

(6) That portion of an energy-related investment allowed as a deduction under 15-32-103.

(7) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection.

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(8) In lieu of the deduction allowed under subsection (7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of (b) of this subsection (8)."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Applicability.** [This act] applies to taxable years beginning after December 31, 1989.

Approved April 22, 1989.

# CHAPTER NO. 618

[SB 160]

AN ACT TO GENERALLY REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO REVISE THE EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR AND DOMESTIC SERVICE; TO EXCLUDE FROM THE DEFINITION OF EMPLOYMENT THE SERVICES PERFORMED BY INSTALLERS OF FLOOR COVERINGS; TO DEFINE TAXABLE WAGE BASE; TO REVISE THE AMOUNT OF WEEKLY UNEMPLOYMENT COMPENSATION BENEFITS PAYABLE TO A CLAIMANT IF HE RECEIVES PERIODIC PAYMENTS FROM CERTAIN OTHER SOURCES; TO REMOVE DISQUALIFICATION FOR BENEFITS DUE TO A CLAIMANT'S RECEIPT OF SEPARATION OR TERMINATION ALLOWANCE; TO PLACE A TIME LIMIT FOR THE REDETERMINATION OF A CLAIM FOR BENEFITS; AMENDING SECTIONS 39-51-201 THROUGH 39-51-204, 39-51-206, 39-51-602, 39-51-1121, 39-51-2203, 39-51-2306, AND 39-51-2402, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-51-201, MCA, is amended to read:

**"39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

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(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 *or a similar statute of another state* due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual

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employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

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(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(18) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability, but in the case of payments made by an employer directly to an employee, only those payments made under a workers' compensation law are excluded from "wages";

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(20) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-202, MCA, is amended to read:

**"39-51-202. Employer defined.** "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year *equals or* exceeds the sum of $1,000;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent

to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 3. Section 39-51-203, MCA, is amended to read:

**"39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment

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subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including without limitations those individuals who work for the state of Montana, its universities, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

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(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment whenever the employing unit pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer, *including but not limited to an employing unit providing outfitter and guide services,* is otherwise subject to *this* chapter and has agricultural employment, all employees *engaged in agricultural labor must be excluded from coverage under this chapter if the employer:*

*(a) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and*

*(b) keeps separate books and records to account for the employment of persons in agricultural labor.*

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to *this* chapter and has domestic *service* employment, all employees *engaged in domestic service must be excluded from coverage under this chapter if the employer:*

*(a) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and*

*(b) keeps separate books and records to account for the employment of persons in domestic service.*"

Section 4. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking

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law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological

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establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

*(n) services performed for the installation of floor coverings if the installer:*

*(i) bids or negotiates a contract price based upon work performed by the yard or by the job;*

*(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;*

*(iii) may perform services for anyone without limitation;*

*(iv) may accept or reject any job;*

*(v) furnishes substantially all tools and equipment necessary to provide the services; and*

*(vi) works under a written contract that:*

*(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;*

*(B) states the installer is not covered by unemployment insurance; and*

*(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.*

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or

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physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 5. Section 39-51-206, MCA, is amended to read:

**"39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader.** (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the *Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et seq.);* or

*(b) (i)* substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

*(ii)* such individual is not an employee of such other person within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9).

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person."

Section 6. Section 39-51-602, MCA, is amended to read:

**"39-51-602. Method to be used by department in keeping wage records.** Wage records kept by the department for the purposes of this chapter shall be kept on the basis of wages paid."

Section 7. Section 39-51-1121, MCA, is amended to read:

**"39-51-1121. Definitions.** As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means December 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

(4) "Department" means the department of labor and industry.

(5) "Eligible employer" means an employer who has been subject under this chapter for the 3 *fiscal* years immediately preceding the computation date and who has:

(a) filed all contribution reports prescribed by the department;

(b) paid all contributions and *all* assessments under 39-51-404(4) and penalties and interest thereon;

(c) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(d) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(6) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

*(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in section 39-51-1108.*

*(9)* "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer."

Section 8. Section 39-51-2203, MCA, is amended to read:

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**"39-51-2203. Reduction of benefits because of amounts received from certain other sources.** (1) Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and *entirely* contributed to by a base-period employer.

(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the department shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981."

Section 9. Section 39-51-2306, MCA, is amended to read:

**"39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits.** (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

*(a)* compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States or under the social security disability law. However, when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this chapter if he shall be otherwise qualified. Compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter, provided the recipient has returned to the labor market and is otherwise qualified.

*(b)* benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States if such benefits are paid pursuant to 39-51-504.

(2) Receipt of any wages, compensation, or benefits as set forth in subsection (1) of this section after payment of unemployment benefits and with respect to the same week for which unemployment benefits were received will thereupon require such individual to repay such unemployment benefits, and the department may collect such unemployment benefits

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in the same manner as provided for collection of benefits under 39-51-3206."

Section 10. Section 39-51-2402, MCA, is amended to read:

**"39-51-2402. Initial determination — redetermination.** (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by the deputy, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum benefit amount or shall refer such claim or any question involved therein to an appeals referee who shall make the decision with respect thereto in accordance with the procedure prescribed in 39-51-2403. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and such other interested parties of the amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim *may* be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within 10 days after such notification was mailed to the interested party's last-known address, provided that such period may be extended for good cause.

*(5) Except as provided in subsection (6), no redetermination of a claim for benefits may be made after 2 years from the date of the initial determination.*

*(6) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."*

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Effective dates.** (1) [Section 11 and this section] are effective on passage and approval.

(2) [Sections 1 through 10] are effective July 1, 1989.

Approved April 22, 1989.

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# CHAPTER NO. 619

[SB 296]

AN ACT REQUIRING JOINT REVIEW AND INSPECTION OF COMMUNITY MENTAL HEALTH CENTERS; AUTHORIZING EMPLOYEES OF ONE STATE AGENCY TO PERFORM CERTAIN FUNCTIONS OF ANOTHER STATE AGENCY; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** The purpose of [this act] is to:

(1) eliminate unnecessary duplication and overlapping of review and inspection of community mental health centers by multiple state agencies;

(2) improve the efficiency and minimize the cost of necessary state review and announced inspection of community mental health centers; and

(3) reduce the inconvenience and cost to community mental health centers of review and inspection by separate state agencies.

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Community mental health center" means a community comprehensive mental health center as defined in 53-21-201.

(2) "State agency" means:

(a) the department of health and environmental sciences provided for in 2-15-2101;

(b) the department of social and rehabilitation services provided for in 2-15-2201;

(c) the department of institutions provided for in 2-15-2301; and

(d) the mental disabilities board of visitors provided for in 2-15-211.

Section 3. **Joint review and inspection.** Each state agency shall, if possible and practical, participate in joint review and inspection of community mental health centers. All joint announced on-site review and inspection activities of state agencies must be coordinated by function so that similar review and inspection activities of each state agency are conducted at one time.

Section 4. **Authorization for employees to perform functions of other state agency.** Each state agency may enter into an interagency agreement with other state agencies to authorize its employees to conduct specific review and inspection of community mental health centers under the jurisdiction of another state agency. Prior to authorizing employees of another state agency to conduct review and inspection under its jurisdiction, each state agency may require minimum standards of knowledge and training relevant to the type of activity to be conducted.

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Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Effective date.** [This act] is effective July 1, 1989.

Approved April 22, 1989.

# CHAPTER NO. 620

[SB 330]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE INSURANCE INDUSTRY; REQUIRING HOLDING COMPANY SYSTEMS TO REGISTER PROPERLY AND TO PROVIDE ACCURATE INFORMATION TO THE COMMISSIONER OF INSURANCE ABOUT THEIR AFFILIATED COMPANIES' TRANSACTIONS; MODIFYING THE LAWS ALLOWING CREDIT FOR REINSURANCE; AND AMENDING SECTIONS 33-2-119, 33-2-1103, 33-2-1105, 33-2-1106, 33-2-1111, 33-2-1113, 33-2-1120, AND 33-2-1205, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6(2)(a)(ii)(E)] authorizes the commissioner of insurance of the state of Montana to specify by rule a material transaction that adversely affects the interests of an insurer's policyholders and [section 8(9)] allows the commissioner to adopt rules implementing [sections 1 through 8]. The legislature intends that the rules the commissioner adopts to implement this bill be designed principally to protect Montana insurance consumers.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-2-119, MCA, is amended to read:

**"33-2-119. Suspension or revocation for violations and special grounds.** (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

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(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay *a* proper *claim* arising under its policies, whether *the* claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to *the* third person, or without just cause compels *the* insured or claimant to accept less than the amount due *him* or to employ attorneys or to bring suit against the insurer or insured to secure full payment or settlement of *the* claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state."

Section 2. Section 33-2-1103, MCA, is amended to read:

**"33-2-1103. Additional investment authority — exemption from other investment restrictions — determination of qualification — divestiture.** (1) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this part, a domestic insurer may also:

(a) invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of *10%* of *the* insurer's assets or 50% of *the* insurer's surplus as regards policyholders, provided that after *the* investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of *the* investments, there *must* be included total net *money* or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of *the* subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities, and all amounts expended in acquiring additional common stock, preferred stock,

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debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(b) if the insurer's total liabilities, as calculated for national association of insurance commissioners annual statement purposes, are less than 10% of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that after *the* investment the insurer's surplus as regards policyholders, considering *the* investment as if it were a disallowed asset, will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(c) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, provided that each subsidiary agrees to limit its investments in any asset so that *the* investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in this section. The total investment of the insurer must include:

(i) any direct investment by the insurer in an asset;

(ii) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which *is* calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of such subsidiary.

(d) with the approval of the commissioner, invest *a greater* amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after *the* investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (1) are not subject to any of the otherwise applicable restrictions or prohibitions contained in this part applicable to such investments of insurers.

(3) Whether any investment pursuant to subsection (1) meets the applicable requirements thereof is to be determined immediately after *the* investment is made, taking into account the then outstanding principal balance on all previous investments in debt obligations and the value of all previous investments in equity securities as of the date they were made.

(4) If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the commissioner may prescribe, unless at any time after *the* investment *is* made, *the* investment *meets* the requirements for investment under any other section of this part and the insurer has notified the commissioner thereof."

Section 3. Section 33-2-1105, MCA, is amended to read:

**"33-2-1105. Approval by commissioner — hearings — notice.** (1) The commissioner shall approve any merger or other acquisition of control referred to in 33-2-1104(1) unless, after a public hearing thereon, he finds that:

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(a) after the change of control the domestic insurer referred to in 33-2-1104(1) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(b) the effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein;

(c) the financial condition of any acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with *the* acquiring party;

(d) the terms of the offer, request, invitation, agreement, or acquisition referred to in 33-2-1104(1) are unfair and unreasonable to the securityholders of the insurer;

(e) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(f) the competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in subsection (1) *must* be held within 30 days after the statement required by 33-2-1104(1) is filed, and at least 20 days notice thereof *must* be given by the commissioner to the person filing the statement. Not less than 7 days' notice of *the* public hearing *must* be given by the person filing the statement to the insurer and to other persons as may be designated by the commissioner. The insurer shall give notice to its securityholders. The commissioner shall make a determination within 30 days after the conclusion of *the* hearing. At *the* hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby *has* the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith *is* entitled to conduct discovery proceedings in the same manner as is presently allowed in the district court of this state. All discovery proceedings *must* be concluded not later than 3 days prior to the commencement of the public hearing.

(3) All statements, amendments, or other material filed pursuant to subsections (1) through (4) of 33-2-1104 and all notices of public hearings held pursuant to subsection (1) *must* be mailed by the insurer to its shareholders within 5 business days after the insurer has received *the* statements, amendments, other material, or notices. The expenses of mailing *must* be borne by the person making the filing. As security for the payment of *the* expenses, *the* person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

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*(4) The commissioner may retain at the acquiring party's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."*

Section 4. Section 33-2-1106, MCA, is amended to read:

**"33-2-1106. Exemptions — violations — jurisdiction.** (1) The provisions of 33-2-1104, 33-2-1105, and this section *do* not apply to *an* offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as:

*(a)* not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer; or

*(b)* otherwise not comprehended within the purposes of 33-2-1104 and 33-2-1105.

(2) The following *are* violations of 33-2-1104, 33-2-1105, and this section:

(a) the failure to file any statement, amendment, or other material required to be filed pursuant to subsections (1) through (4) of 33-2-1104;

(b) the effectuation or any attempt to effectuate an acquisition of control of or merger with a domestic insurer unless the commissioner has given his approval thereto.

(3) The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under 33-2-1104 and over all actions involving *the* person arising out of violations of 33-2-1104, 33-2-1105, and this section, and each such person *is considered* to have performed acts equivalent to and constituting an appointment by such a person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process *must* be served on the commissioner and transmitted by certified mail by the commissioner to *the* person at his last-known address."

Section 5. Section 33-2-1111, MCA, is amended to read:

**"33-2-1111. Registration of insurers — requisites — termination.** (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within 60 days after July 1, 1971, or 15 days after it becomes subject to registration, whichever is later, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to

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registration under this section to furnish a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(2) Every insurer subject to registration shall file *with the commissioner, on or before April 30 each year,* a registration statement on a form provided by the commissioner, which *must* contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity of every member of the insurance holding company system;

(c) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

*(vii) dividends and other distributions to shareholders; and*

*(viii) consolidated tax allocation agreements;*

*(d) any pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance holding company system;*

*(e)* all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

*(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.*

*(4)* No information need be disclosed on the registration statement filed pursuant to subsection (2) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving ½ of 1% or less of an insurer's admitted assets as of

December 31 next preceding *may* not be deemed material for purposes of this section.

*(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.*

*(6)* Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each such change or addition. *Except as provided in* 33-2-1114, each registered insurer shall report all dividends and other distributions to shareholders within 2 business days following the declaration thereof.

*(7)* The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

*(8)* The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

*(9)* The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section."

Section 6. Section 33-2-1113, MCA, is amended to read:

**"33-2-1113. Transactions with affiliates — standards.** (1) Material transactions by registered insurers with their affiliates *are* subject to the following standards:

(a) The terms *must* be fair and reasonable.

*(b) Charges or fees for services performed must be reasonable.*

*(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.*

*(d)* The books, accounts, and records of each party *must* be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, *including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.*

*(e)* The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates *must* be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

*(2) (a) The following transactions involving a domestic insurer and a person in its holding company system may not be entered into unless the*

*insurer has notified the commissioner in writing of its intention to enter into a transaction and the commissioner has not disapproved it within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit:*

*(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:*

*(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and*

*(B) with respect to life insurers, 3% of the insurer's admitted assets;*

*(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if such transactions, as of the prior December 31, are equal to or exceed:*

*(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders;*

*(B) with respect to life insurers, 3% of the insurer's admitted assets;*

*(C) reinsurance agreements or modifications to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;*

*(D) all management agreements, service contracts, and cost-sharing arrangements; and*

*(E) any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.*

*(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.*

*(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, he may exercise his authority under 33-2-1120.*

*(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set*

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*forth in subsection (1) and whether it may adversely affect the interests of a policyholder.*

*(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.*

*(6)* For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, *must* be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment *the* investment so warrants."

Section 7. Section 33-2-1120, MCA, is amended to read:

**"33-2-1120. Criminal or civil proceedings — penalties.** (1) *An insurer failing without just cause to file a registration statement as required in 33-2-1111 shall, after notice and hearing, pay a penalty of $100 for each day of delinquency. The maximum penalty under this subsection is $25,000. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.*

*(2) A director or an officer of an insurance holding company system who knowingly violates, participates in, or assents to a transaction or who knowingly permits an officer or agent of the insurer to engage in a transaction or make an investment that has not been properly reported or submitted pursuant to 33-2-1111 or 33-2-1113 or that violates any other*

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*provision of Title 33, chapter 2, part 11, shall, after notice and hearing, pay, in his individual capacity, a fine of not more than $5,000 for each violation. To determine the amount of the fine, the commissioner shall consider the appropriateness of the fine with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.*

*(3) If the commissioner determines that an insurer subject to Title 33, chapter 2, part 11, or a director, officer, employee, or agent of the insurer has engaged in a transaction or entered into a contract that is subject to 33-2-1113 and that would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contract and restore the status quo if such action is in the best interest of policyholders, creditors, or the public.*

*(4)* Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this part, the commissioner may cause criminal proceedings to be instituted by the district court for the county in which the principal office of the insurer is located or if such insurer has no such office in the state, then by the district court for Lewis and Clark County against such insurer or the responsible director, officer, employee, or agent thereof.

*(5)* Any insurer which willfully violates this part may be fined not more than *$25,000.*

*(6)* Any individual who willfully violates this part may be fined not more than *$5,000* or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, imprisoned not more than 2 years or both."

Section 8. Section 33-2-1205, MCA, is amended to read:

**"33-2-1205. Reinsurance — limitations — credit as asset.** (1) An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

(2) *Credit for reinsurance is allowed a ceding insurer as either an asset or a deduction from liability on account of ceded reinsurance only if the reinsurance is ceded to a* solvent insurer authorized to transact insurance in *a state* and having surplus to policyholders in *an* amount not less than the paid-in capital stock required of a domestic stock insurer transacting like kinds of insurance.

(3) *Credit for reinsurance is* allowed to *a ceding* insurer, as an asset or a deduction from liability, for reinsurance ceded to an alien insurer *only if:*

*(a) the reinsurance is ceded to an assuming insurer that maintains a trust fund in a United States bank or trust company for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that*

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*required to be reported on the national association of insurance commissioners annual statement form by authorized insurers, to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust fund must consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, must include a trusteed surplus of not less than $20 million. In the case of a group of individual unincorporated underwriters, the trust must consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of not less than $100 million, and the group shall make available to the commissioner an annual certification of the solvency of each underwriter provided by the group's domiciliary regulator and its independent public accountants.*

*(i) The trust fund must be established in a United States bank or trust company that is a member of the federal reserve system, in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of a court of competent jurisdiction in the United States. The trust fund must vest legal title to its assets in the trustees of the trust fund for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust fund and the assuming insurer are subject to examination as determined by the commissioner. The trust fund described herein must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust fund.*

*(ii) No later than February 28 of each year, the trustees of the trust fund shall report to the commissioner in writing, setting forth the balance of the trust fund and listing the trust's investments at the preceding yearend, and shall certify the date of termination of the trust fund, if so planned, or certify that the trust fund will not expire before the following December 31.*

*(b) the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection (2) but only with respect to the insurance of risks located in jurisdictions other than the United States where such reinsurance is required by applicable law or rule of that jurisdiction.*

*(4) (a) If the assuming insurer is not authorized to transact insurance in this state, the credit permitted by subsections (2) or (3) is not allowed unless the assuming insurer agrees in the reinsurance agreement:*

*(i) that, if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer or its domiciliary liquidator or receiver, will:*

*(A) submit to the jurisdiction of a court of competent jurisdiction in a state of the United States;*

*(B) comply with all requirements necessary to give the court jurisdiction; and*

*(C) abide by the final decision of the court or of an appellate court in the event of an appeal; and*

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*(ii) to designate the commissioner or a designated attorney as its attorney upon whom lawful process may be served in an action, suit, or proceeding instituted by or on behalf of the ceding insurer.*

*(b) This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if the obligation is created in the agreement.*

*(5) A reduction from liability for the reinsurance ceded to an assuming insurer not meeting the requirements of subsection (2) must be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract, if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer or, in the case of a trust, if the security is held in a United States bank or trust company that is a member of the federal reserve system. This security may be in the form of:*

*(a) cash;*

*(b) securities listed by the security valuation office of the national association of insurance commissioners and qualifying as admitted assets;*

*(c) clean, irrevocable, unconditional letters of credit issued or confirmed in writing by a bank or trust company that is a member of the federal reserve system; or*

*(d) any other form of security acceptable to the commissioner.*

*(6)* Credit *must* be allowed as an asset or a deduction from liability to a ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under the foregoing provisions of this section, except that credit *may not* be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

*(7)* Upon request of the commissioner, an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

*(8)* This section *does* not apply to wet marine and transportation insurance.

*(9) The commissioner may adopt rules implementing the provisions of this part."*

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of

[this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 22, 1989.

# CHAPTER NO. 621

[HB 56]

AN ACT DIRECTING THE DEPARTMENT OF HIGHWAYS TO DESIGN, ERECT, AND MAINTAIN CERTAIN WELCOME AND FAREWELL SIGNS; PROVIDING CERTAIN EXCEPTIONS; PROVIDING GENERAL SPECIFICATIONS FOR THE SIGNS; AUTHORIZING THE DEPARTMENT OF HIGHWAYS TO ACCEPT AND EXPEND MONEY FOR THE PURPOSE OF THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Welcome and farewell signs — design, erection, maintenance — completion date — exceptions — use of existing signs.** (1) (a) The department shall:

(i) design, erect, and maintain welcome and farewell signs within Montana at the nearest practical location to the border of the state where each federal-aid interstate highway, except interstate 90 at the Montana-Idaho border in Mineral County, and each federal-aid primary highway enters or leaves Montana;

(ii) select locations for the signs consistent with the requirements for public safety and maximum visibility and with all applicable provisions of federal law; and

(iii) subject to the exception in subsection (1)(a), complete the construction and erection of welcome and farewell signs:

(A) on the four interstate highways and on highway 212 in Carter County before July 1, 1991; and

(B) on the remainder of the primary highways at the earliest possible date.

(b) However, nothing in this subsection (1) prevents the department from constructing and erecting signs on the remaining primary highways before July 1, 1991.

(2) Except as provided in subsection (3), the welcome and farewell signs must be:

(a) (i) on the interstate system, approximately 20 feet high and 38 feet wide; and

(ii) on the primary system, approximately 8 feet high and 16 feet wide;

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(b) of substantial timber and plank construction, similar to those shown in the design dated July 16, 1962, and formerly in use at Montana's borders, with the inscriptions:

(i) at each entrance to Montana:

"The Gate is Open
Welcome to
MONTANA"; and

(ii) at each exit from Montana:

"So Long!
Come Again to
MONTANA".

(3) Notwithstanding the provisions of subsection (2), welcome or farewell signs in place on the interstate highway system on [the effective date of this act] and required to be replaced under the provisions of [this act] must be utilized at locations on the primary highway system as long as those signs remain serviceable. When those signs are no longer serviceable, they must be replaced on the primary systems with signs described in subsection (2).

Section 2. **Department authorized to accept and expend funds for welcome and farewell signs.** The department may accept money from other state agencies, federal agencies, or private persons for the purposes of [this act] and may expend the money received for those purposes. There is appropriated for the 1990-91 biennium ~~$25,000~~ from the highway special revenue fund to pay toward this project.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [sections 1 and 2].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1989.

# CHAPTER NO. 622

[HB 44]

AN ACT REVISING PROVISIONS CONCERNING INTERENTITY LOANS WITHIN STATE GOVERNMENT; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-2-107, MCA, is amended to read:

**"17-2-107. Accurate accounting records and interentity loans.** (1) The department of administration shall record receipts and disbursements for treasury funds and for *accounting entities* within treasury funds

and shall maintain records in such a manner as to reflect the total cash and invested balance of each fund and each *accounting entity*. The department of administration shall adopt the necessary procedures to insure that interdepartmental or intradepartmental transfers of money *or loans* do not result in inflation of figures reflecting total governmental costs and revenues.

(2) *(a)* When the expenditure of an appropriation *from a fund designated in 17-2-102(1)(a) through (1)(c)* is necessary and the cash balance in the *accounting entity* from which the appropriation was made is insufficient, the department of administration may authorize a temporary loan, bearing no interest, of unrestricted *money* from other *accounting entities if* there is reasonable evidence that the income will be sufficient to *repay the loan* within 1 calendar year and *if* the loan is recorded in the state accounting records. *An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.*

*(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.*

*(ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d)(i)(A) through (1)(d)(vi) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.*

*(c) A* loan *made under subsection (2)(a) or (2)(b)* must be repaid within 1 calendar year of the date the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances the director of the department of administration *or the board of regents* may grant one extension for up to 1 year *for a loan made under subsection (2)(a) or (2)(b).* The *director or board* shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in *17-2-102*(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) *must* bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool. Except for investment earnings on restricted donations, all designated and restricted subfund investment earnings, other than investment earnings on student

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activity fees used to support student governments at units of the university system, are credited to the state general fund.

*(5) If for two consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department of administration or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.*

*(6) If for two consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(1)(d)(i) through (1)(d)(vi) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.*

*(7) (a) An* accounting entity *in a fund designated in 17-2-102(1)(a) through (1)(c)* may *not* have a negative cash balance at fiscal yearend. The department of administration may, however, allow *an accounting entity* to carry a negative balance at any point during the fiscal year *if the* negative cash *balance does* not exist *for* more than 7 working days.

(b) *(i) Except as provided in subsection (7)(b)(ii), a unit* of the university system *or* vocational-technical *center shall* maintain *a* positive cash *balance* in the *funds and* subfunds *designated in 17-2-102*(1)(d)(i)(A) through (1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi).

*(ii) If a fund or subfund inadvertently has a negative cash balance, the department of administration may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.*

*(8)* Notwithstanding the provisions of subsections (2) through (4), the department of social and rehabilitation services may maintain positive cash balances in the federal special revenue fund with long-term repayment whenever necessary due to the timing for transmittal of obligated matching funds if it can be demonstrated to the satisfaction of the department of administration that the total loan balance does not exceed total receivables from federal and county governments and receivables have been billed on a timely basis. The loan must be repaid under such terms and conditions as may be determined by the department of administration or by specific legislative authorization."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1989.

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# CHAPTER NO. 623

[HB 60]

AN ACT TO SPECIFY QUALIFICATIONS FOR THE OFFICE OF COUNTY ASSESSOR; TO MANDATE EDUCATIONAL REQUIREMENTS FOR THE CERTIFICATION OF COUNTY ASSESSORS; TO MANDATE CONTINUING EDUCATION REQUIREMENTS FOR COUNTY ASSESSORS; AMENDING SECTION 15-1-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Qualifications for office of county assessor — forfeiture of office.** (1) In addition to the qualifications set forth in 7-4-2201, each assessor, before entering the duties of his office, must:

(a) take and file with the county clerk the constitutional oath of office; and

(b) certify to the county clerk that:

(i) he has satisfactorily completed the assessor certification training as provided in [section 3(2)]; or

(ii) he intends to take the assessor certification training at the next offering.

(2) An assessor forfeits his office for failure to take and satisfactorily complete the assessor certification training within 36 months after taking office by election or appointment or for failure to satisfactorily complete annual continuing education as provided in [section 3], unless the board of county commissioners finds that:

(a) the assessor is excused for reasons beyond his control, including illness, a death in the family, or other good cause; or

(b) there is no other qualified person available for appointment as assessor.

Section 2. **Purpose.** The legislature hereby establishes a system of instruction, examination, and certification for all county assessors for the following purposes:

(1) to establish and document the achievement of competency requirements for county assessors and to assure that all assessors possess and are able to apply the knowledge, skills, and abilities required in the daily performance of assessor duties; and

(2) to benefit the interests of local government units, property taxpayers, and property tax administrators statewide by the professional development and increased competency of elected or appointed county assessors.

Section 3. **Assessor certification training and continuing education.** (1) The department of revenue shall conduct annual assessor certification training and continuing education. The cost of conducting such

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education must be borne by the department. The department shall pay the mileage and per diem of each assessor and each assessor-elect attending.

(2) The annual assessor certification training includes:

(a) personal property assessment training;

(b) training in fundamentals of real property appraisal in the course I format of the international association of assessing officers; and

(c) training in property tax administration, personnel management, fiscal management, public relations, assessor ethics, and related public management principles.

(3) The annual assessor continuing education must include 18 hours of advanced training covering the subjects described in subsection (2).

(4) An assessor shall satisfactorily complete 18 hours of advanced training within a 3-year period.

(5) The department shall issue an assessor a document acknowledging that he is a certified assessor upon his satisfactory completion of the training in subsection (2) and 18 months' service as an elected or appointed assessor.

Section 4. Section 15-1-202, MCA, is amended to read:

"**15-1-202. Enforcement of revenue laws.** (1) The department of revenue may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct, neglect of duty, *or failure of an assessor to comply with the certification or continuing education requirements of [section 3].*

(2) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings in their respective counties for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws *or for failure of an assessor to comply with the certification or continuing education requirements of [section 3].*

*(3) Nothing in this section affects the authority of any other person, public officer, or public body to pursue any other legal process for the removal from office of an assessor who forfeits office for failure to comply with certification and continuing education requirements.*"

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 4, part 30, and the provisions of Title 7 apply to [section 1].

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(2) [Sections 2 and 3] are intended to be codified as an integral part of Title 15, chapter 8, part 1, and the provisions of Title 15 apply to [sections 2 and 3].

Section 7. **Effective date.** [This act] is effective January 1, 1991.

Approved April 24, 1989.

## CHAPTER NO. 624

[HB 233]

AN ACT ALLOCATING REIMBURSEMENTS FOR INDIRECT COSTS OF UNIVERSITY GRANTS AND CONTRACTS TO THE UNIVERSITY SYSTEM; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Allocation of indirect cost reimbursements.** Any reimbursement for indirect costs associated with a grant to or contract with the Montana university system or any of its units is allocated to the designated subfund of the university current fund, as provided in 17-2-102, for distribution to the unit receiving the grant or under the contract.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 20, chapter 25, part 4, and the provisions of Title 20, chapter 25, part 4, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1990.

Approved April 24, 1989.

## CHAPTER NO. 625

[HB 463]

AN ACT ALLOWING A DISTRICT COURT TO APPOINT A WATER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A NONDECREED BASIN; ESTABLISHING AN EDUCATIONAL PROGRAM FOR WATER COMMISSIONERS AND MEDIATORS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appointment of water mediators — duties.** (1) The judge of the district court may appoint a water mediator to mediate a water controversy in a nondecreed basin under the following circumstances:

(a) upon request of the governor; or

(b) upon petition by at least 15% of the owners of water rights in a nondecreed basin.

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(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) review options related to scheduling and coordinating water use with affected water right holders;

(c) discuss water use and water needs with persons and entities affected by the existing water use;

(d) meet with principal parties to mediate differences over the use of water; and

(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator, as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) Nothing in this section allows a water mediator to require any valid water right holder to compromise or reduce any of his existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of his appropriation right or voluntarily ceases to use his appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of his appropriation right.

Section 2. **Water commissioner and mediator education.** The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

(1) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;

(2) preparation and, as necessary, revision of a water commissioner and mediator manual; and

(3) an outreach program that identifies persons who might serve as water commissioners or mediators.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 5, part 1, and the provisions of Title 85, chapter 5, part 1, apply to [sections 1 and 2].

Section 4. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1989.

# CHAPTER NO. 626

[HB 526]

AN ACT ELIMINATING THE ALLOCATION OF COAL SEVERANCE TAX REVENUES TO THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION ACCOUNT; TRANSFERRING THE UNOBLIGATED CASH BALANCE FROM THE ALTERNATIVE ENERGY AND ENERGY CONSERVATION RESEARCH DEVELOPMENT AND DEMONSTRATION ACCOUNT TO THE GENERAL FUND; AMENDING SECTIONS 15-35-108, 22-2-304, 90-3-101, AND 90-4-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, elimination of the allocation of coal severance tax revenues in section 15-35-108, MCA, to the alternative energy and energy conservation research development and demonstration account would allow those revenues to be deposited in the state general fund from which the Legislature can appropriate that money to fund the Department of Natural Resources and Conservation.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108. Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

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*(a)* 4% until June 30, 1989, to the state special revenue fund to the credit of the local impact account and thereafter 20% to the state special revenue fund to the credit of the education trust fund account and 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the education trust fund account.

*(b)* 44.2% until June 30, 1989, and thereafter 10% to the state special revenue fund for state equalization aid to public schools of the state;

*(c)* 1% to the state special revenue fund to the credit of the county land planning account;

*(d)* 1 ¼% to the credit of the renewable resource development bond fund;

*(e)* after June 30, 1989, 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

*(f)* 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

*(g)* ½ of 1% to the state special revenue fund for conservation districts;

*(h)* 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

*(i)* 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

*(j)* all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. Section 90-4-103, MCA, is amended to read:

**"90-4-103. Alternative energy and energy conservation research development and demonstration account established — allocation of funds.** (1) There is within the state special revenue fund an alternative energy and energy conservation research development and demonstration account. *Money is* paid into this account *from repayments of grants and loans previously awarded from this account by the department of natural resources and conservation and by the department of commerce through the science and technology research program of the Montana science and technology development board under 90-3-101 as it read before [the effective date of this act].* The state treasurer shall draw warrants payable from this account upon order of the department.

(2) Each fiscal year the department shall allocate the funds appropriated from the alternative energy and energy conservation research development and demonstration account for the following:

(a) grants under 90-4-104 and 90-4-106;

(b) loans under 90-4-104 and 90-4-106;

(c) grants to state governmental units under 90-4-109;

(d) program administration; and

(e) matching federal energy programs and petroleum violation escrow account money if consistent with the purposes of this chapter.

(3) To assure that the program offers the greatest possible benefits during the fiscal year, the department may reallocate funds among the categories specified in this section based on the availability of funds or the applications it receives and the department's evaluation of the relative merits of each project."

Section 3. **Transfer of alternative energy unobligated cash balance to general fund.** (1) The unobligated cash balance from the alternative energy and energy conservation research development and demonstration account at the end of fiscal year 1989 is transferred to the general fund.

(2) The department of natural resources and conservation shall retain $10,000 of the unobligated cash balance within the alternative energy and energy conservation research development and demonstration account at the end of fiscal year 1989 to fully fund its appropriations in the 1990-91 biennium.

Section 4. **Unobligated cash balance defined.** As used in [section 3], "unobligated cash balance from the alternative energy and energy conservation research development and demonstration account" is the fund balance at the end of fiscal year 1989 less all accruals, loan receivables, and any other legal obligations of either the department of natural resources and conservation or the department of commerce that encumber funds in the account.

Section 5. Section 22-2-304, MCA, is amended to read:

**"22-2-304. Cultural and aesthetic project appropriations — administration.** (1) The legislature must appropriate funds from the income of the trust fund created in 15-35-108*(3)(e)* before any grant for a cultural or aesthetic project is awarded.

(2) Costs incurred by the Montana arts council for accounting, correspondence, project visits, and solicitation of proposals related to cultural and aesthetic project grants and the costs of the advisory committee established in 2-15-1521 shall be paid from appropriations from the income of the trust fund.

(3) Grant proposals are heard by a legislative appropriations subcommittee.

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(4) Grant proposals approved by the legislature are administered by the Montana arts council."

Section 6. Section 90-3-101, MCA, is amended to read:

**"90-3-101. Purpose.** It is the purpose of this chapter to strengthen and diversify Montana's economy by establishing a public-private sector partnership to encourage scientific and technological development within the state in order to keep pace with a transforming economic structure and to create new jobs and expand small business opportunities."

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 8. **Coordination instruction.** (1) If House Bill No. 683 is not passed and approved, [section 3(2) of this act] is void.

(2) If House Bill No. 683 is passed and approved, the language in [section 2 of this act] that provides, "and by the department of commerce through the science and technology research program of the Montana science and technology board under 90-3-101 as it read before [the effective date of this act]", is void.

Section 9. **Effective date.** [This act] is effective July 1, 1989.

Approved April 24, 1989.

# CHAPTER NO. 627

[HB 543]

AN ACT PROVIDING A SUPPLEMENTAL RETIREMENT ALLOWANCE TO CERTAIN RETIRED MONTANA HIGHWAY PATROL OFFICERS OR THEIR SURVIVING SPOUSES TO BE PAID WITH REVENUE COLLECTED FROM MOTOR VEHICLE REGISTRATION FEES; INCREASING THESE FEES; AMENDING SECTION 61-3-321, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Supplemental retirement allowance for certain retirees.** (1) Retired Montana highway patrol officers or their surviving spouses who are 65 years of age or older or disabled and who are not entitled through their own or their spouses' contributions to social security or medicare to prepaid medicare hospital insurance coverage are eligible for a supplemental retirement benefit.

(2) Subject to the restrictions in subsection (1) and beginning on the first day of the month after receipt of written application of an eligible retiree, the retirement system shall pay a supplemental benefit equal to the premium for coverage under medicare hospital insurance, excluding coverage for a spouse and dependents, from revenue deposited in the state special revenue fund, as provided in 61-3-321(5). The written application must

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be accompanied by proof that the retiree is paying for medicare hospital insurance coverage.

(3) The supplemental benefit payment made under subsection (2) may not exceed the medicare hospital insurance premium in effect on July 1, 1989, for similar coverage.

Section 2. Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees *must* be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses *are* classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, *must* pay a fee of $15 annually, regardless of size or capacity.

(2) All rates *are* 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year *is* one-half of the regular fee.

(5) An additional fee of *$3.25* per year for each registration of a vehicle *must* be collected as a registration fee. Revenue from this fee *must* be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the state special revenue

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fund. *The department of justice shall distribute 25 cents from each fee collected to the highway patrol retirement fund.*

(6) The provisions of this part with respect to the payment of registration fees *do* not apply to *and are not* binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(7) The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332(7), or 61-3-335."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 6, and the provisions of Title 19, chapter 6, apply to [section 1].

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved April 24, 1989.

# CHAPTER NO. 628

[HB 583]

AN ACT TO ELIMINATE STATUTORY APPROPRIATIONS FOR EXPENSES OF ADMINISTERING OR OPERATING A PROGRAM; AMENDING SECTIONS 2-18-812, 10-4-301, 17-7-502, 20-4-109, 23-5-1027, 33-31-212, 33-31-401, 67-3-205, 75-7-305, 76-12-123, 80-2-103, 80-2-228, 90-9-306, AND 90-15-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-18-812, MCA, is amended to read:

**"2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements.** The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department must maintain state employee group benefit plans on an actuarially sound basis.

(2) The department must maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department must deposit all reserve funds and premiums paid to a state employee group benefit plan, and *the* deposits are statutorily

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appropriated, as provided in 17-7-502, to the department to be expended for claims under the plan.

(4) The department must deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) of this section in order to offset the costs of administering the plan. *Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.*

(5) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance. The department may not implement any full self-insurance alternative prior to July 1, 1981.

(6) The provisions of Title 33 shall not apply to the department when exercising the powers and duties provided for in this section."

Section 2. Section 10-4-301, MCA, is amended to read:

**"10-4-301. Establishment of emergency telecommunications account.** A 9-1-1 emergency telecommunications account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the account. After payment of refunds pursuant to 10-4-205, the balance of the account *must* be used for the purposes described in part 1 of this chapter. *The distribution of the 9-1-1 emergency telecommunications account, according to the requirements of 10-4-302, is statutorily appropriated. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.*"

Section 3. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404;

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16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 76-12-123; 80-2-103; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 4. Section 20-4-109, MCA, is amended to read:

**"20-4-109. Fees for teacher and specialist certificates.** (1) Each person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed $4 for each school fiscal year that the certificate will be valid. In addition to this fee, each person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $4. *The* fees *must* be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer in the following manner:

(a) $2 to the credit of the state special revenue fund created in subsection (2);

(b) $2 to the general fund.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account. The money in the account *must be used* for expenses *of* the certification standards and practices advisory council created in 2-15-1522."

Section 5. Section 23-5-1027, MCA, is amended to read:

**"23-5-1027. Disposition of revenue.** (1) (a) As near as possible to 45% of the money paid for tickets or chances must be paid out as prize money, except as provided in subsection (b).

(b) In the case of a regional lottery game, a maximum of 50% of the money paid for tickets or chances may be paid out as prize money.

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(2) Up to 15% of the gross revenue from the state lottery may be used by the director to pay the operating expenses of the state lottery. Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

*(3)* That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses is net revenue and must be paid quarterly from the enterprise fund established by 23-5-1026 to the superintendent of public instruction for distribution as equalization aid to the retirement fund obligations of elementary and high school districts in the manner provided in 20-9-532.

*(4) Lottery revenue allocated under subsections (1) and (3) is statutorily appropriated, as provided in 17-7-502, for the purposes specified in those subsections."*

Section 6. Section 33-31-212, MCA, is amended to read:

**"33-31-212. Fees.** (1) Each health maintenance organization shall pay to the commissioner the following fees:

(a) for filing an application for a certificate of authority or amendment thereto, $300;

(b) for filing an amendment to the organization documents that requires approval, $25;

(c) for filing each annual statement, $25;

(d) for annual continuation of certificate of authority, $300.

(2) All fees and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-31-211(3) and 33-31-405, collected by the commissioner pursuant to this chapter and the rules adopted thereunder must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123.

(3) The director may assess fees necessary and adequate to cover the expenses of the director's functions under this chapter."

Section 7. Section 33-31-401, MCA, is amended to read:

**"33-31-401. Examination.** (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to protect the interests of the people of this state. The commissioner shall make an examination at least once every 3 years.

(2) The department of health may examine the availability, accessibility, and continuity of the health care services provided by any health maintenance organization and the providers with whom the health maintenance organization has contracts, agreements, or other arrangements as often as is reasonably necessary to protect the interests of the people of this state. The department of health shall make such an examination at least once every 3 years.

(3) Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every

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way facilitate the examinations. For the purpose of examination, the commissioner and the department of health may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of the providers concerning their business.

(4) (a) (i) Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any examination.

(ii) If a health maintenance organization fails to pay the charges and expenses as referred to in subsection (4)(a)(i), the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of funds. The amount so paid must be a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund.

(b) The expenses of examination conducted by the director under this section must be assessed against the health maintenance organization and remitted to the director.

(5) In lieu of an examination, the commissioner or the director may accept the report of an examination made by the commissioner or the director of another state."

Section 8. Section 67-3-205, MCA, is amended to read:

**"67-3-205. Aircraft registration account — source of funds — allocation.** (1) There is an account in the state special revenue fund to which must be credited all money received from fees paid in lieu of tax on aircraft as required in this part and 15-24-304 and all penalties collected for registration violations as provided in 67-3-202.

(2) Money in the account is allocated as follows:

(a) 90% to the counties in the proportion that each county's collections bear to the total collections statewide; and

(b) 10% to the department for the purpose of administering and enforcing aircraft registration.

(3) The allocations required in subsection (2)(a) must be made twice annually by the department. The first allocation must be made between March 15 and March 30 and the second allocation must be made between July 1 and July 15.

(4) The allocation required in subsection (2)(b) must be made on July 1 of each year.

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(5) On receipt of the money allocated as provided in subsection (2)(a), the county treasurer shall distribute the money in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(6) The allocations required in subsection (2)*(a)* are considered statutory appropriations as described in 17-7-502."

Section 9. Section 75-7-305, MCA, is amended to read:

**"75-7-305. Commission authority.** (1) The commission may make recommendations to the legislature and the governor and to federal, tribal, provincial, and local agencies for maintenance and enhancement of the quality of natural resources of the Flathead basin.

(2) The commission may receive and expend donations, gifts, grants, and other money necessary to fulfill its duties."

Section 10. Section 76-12-123, MCA, is amended to read:

**"76-12-123. Natural areas account.** (1) There is a natural areas special revenue account within the state special revenue fund established in 17-2-102.

(2) The natural areas account may receive funds from any source as gifts.

(3) The department may spend funds accepted as gifts in accordance with the purposes of this part, including administration of a natural areas program. These funds, *except funds used for administration of a program,* are statutorily appropriated, as provided in 17-7-502."

Section 11. Section 80-2-103, MCA, is amended to read:

**"80-2-103. Administration of trust assets.** Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture under 80-2-102 *must* be received by the department and paid by it to the state treasurer for deposit in the expendable trust fund and *are* statutorily appropriated, as provided in 17-7-502, to be used for expenditure or obligation by the department for the purposes of 80-2-102 or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture, subject to Public Law 499. *Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.*"

Section 12. Section 80-2-228, MCA, is amended to read:

**"80-2-228. Reserve fund.** (1) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the levy enough in any year so that such addition to the reserve will exceed 5% of the maximum risk written for that year.

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(2) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount shall be the maximum permissible reserve fund for the next year.

(3) The reserve shall be deposited in an expendable trust fund.

(4) The board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board for the current year pursuant to 80-2-221."

Section 13. Section 90-9-306, MCA, is amended to read:

"**90-9-306. Appropriation authority and funding — prohibited investments.** (1) The council has authority to accept and expend all funds received by it as grants, donations, or other private or public income, including amounts repaid as principal and interest on investments made by the council. These funds are statutorily appropriated to the council, as provided in 17-7-502, *for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this chapter must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.*

(2) *An investment* may *not* be made in projects for which matching funds or participation of financial intermediaries is required until *the* funds have been committed.

(3) Council members may not personally apply for or receive council investment funds. If an organization with which a member is affiliated applies for council funds, the member must disclose the nature of the affiliation and may not participate in the decision of the council regarding the application."

Section 14. Section 90-15-103, MCA, is amended to read:

"**90-15-103. Funding.** The library and each principal data source agency may apply for and may receive funding from private and public sources for the purposes of this chapter."

Section 15. **Effective date.** [This act] is effective July 1, 1989.

Approved April 24, 1989.

# CHAPTER NO. 629

[HB 774]

AN ACT REQUIRING THE DEPARTMENT OF HIGHWAYS TO ASSIST IN THE MAINTENANCE OF A CERTAIN ROAD; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Montana established a state secondary road system in 1961 in which county roads of identified statewide importance would be constructed or reconstructed to oiled standards by counties at

their expense, and when the standards were met, the state would assume the maintenance responsibility for the road; and

WHEREAS, four county roads that were originally identified as eligible for state maintenance upon reaching oiled standards are not being maintained by the state; and

WHEREAS, although section 60-2-203, MCA, enacted in 1977, prohibits the Department of Highways from abandoning maintenance obligations it had assumed by that date, it should not be construed to prohibit assumption of later maintenance obligations; and

WHEREAS, if a county has constructed or reconstructed a designated road to oiled standards, it is incumbent upon the state to assume the responsibility for the maintenance of the road.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Maintanance assistance.** The department of highways shall assist in the maintenance of FAS 223, Fort Benton — Chester.

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved April 24, 1989.

## CHAPTER NO. 630

[HB 54]

AN ACT CREATING A STATUTORY LEGISLATIVE COMMITTEE ON INDIAN AFFAIRS; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the 1987 Montana Legislature, through adoption of House Bill No. 20, provided for appointment of a four-member, equally bipartisan Committee on Indian Affairs; and

WHEREAS, House Bill No. 20 directed the Committee to perform a variety of tasks, including holding hearings to promote better understanding between the tribes and the public agencies, acting as a liaison between the Indian people and the Legislature, promoting amicable Indian/non-Indian relations, and encouraging participation of Indian people at its meetings; and

WHEREAS, the Legislature appropriated $4,500 to the Committee to fulfill the mandates of its enabling legislation; and

WHEREAS, within this limited budget, the Committee held four meetings and addressed such topics as cross-deputization agreements and Indian students in postsecondary education; and

WHEREAS, these meetings were well attended by both tribal representatives and state agency personnel; and

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WHEREAS, these meetings provided a forum for both Indian and non-Indian people to discuss their concerns before a legislative body; and

WHEREAS, the Committee succeeded in developing good rapport with many tribal representatives; and

WHEREAS, the Indian people in Montana have indicated support for appointment of a legislative committee to continue the work of the 1987-88 Committee on Indian Affairs; and

WHEREAS, it is in the interest of all Montanans that Indian/non-Indian communications and relations be enhanced; and

WHEREAS, appointment of a statutory legislative committee on Indian affairs would enhance Indian/non-Indian communications, relations, and cooperation.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definition.** As used in [sections 1 through 9], "committee" means the committee on Indian affairs created in [section 2].

Section 2. **Committee on Indian affairs — appointment and composition.** (1) There is a committee on Indian affairs.

(2) The committee consists of two members of the senate, appointed by the committee on committees on a bipartisan basis, and two members of the house of representatives, appointed by the speaker of the house on a bipartisan basis.

(3) Appointments must be made before final adjournment of a regular session.

Section 3. **Term of office.** Appointments to the committee are for 2 years. A member of the committee serves until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

Section 4. **Vacancies.** (1) A vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. **Officers.** The committee shall select one of its members as chairman and may elect other officers it considers necessary.

Section 6. **Meetings and compensation.** (1) The committee shall meet as often as the chairman considers necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

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Section 7. **Staff assistance.** The legislative council shall provide staff assistance to the committee. The legislative council has the same authority of investigation and examination and the same authority to hold hearings on behalf of the committee as it has for other committees under 5-11-106 and 5-11-107.

Section 8. **Duties of the committee.** The committee shall:

(1) seek opinions of and information from Indian tribes, Indian tribal organizations, state agencies, local governments, non-Indians living on or near Indian reservations, and other interested persons and agencies in order to gain insight into Indian/non-Indian relations;

(2) hold hearings both on and off reservations to promote better understanding between tribes and public agencies and to improve both the Indian people's knowledge of the structure of state agencies and the legislative process and the non-Indian people's knowledge of tribal government and institutions;

(3) encourage and foster participation of Indian people at its meetings;

(4) act as a liaison between the Indian people and the legislature;

(5) encourage tribal-state and tribal-local government cooperation and otherwise promote amicable Indian/non-Indian relations;

(6) cooperate with the commissioner of higher education in a study of Indian students in Montana schools; and

(7) report its activities, findings, recommendations, and any proposed legislation to the legislature.

Section 9. **Appropriation.** There is appropriated for the biennium ending June 30, 1991, $6,000 from the general fund to the legislative council for use by the committee on Indian affairs.

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved April 25, 1989.

# CHAPTER NO. 631

[HB 58]

AN ACT PROVIDING FOR LOCAL GOVERNMENT DISCRETION TO SUSPEND OR CANCEL DELINQUENT PROPERTY TAXES ON COMMERCIAL PROPERTY TO FACILITATE THE PURCHASE AND CONTINUED OPERATION OF A BUSINESS UTILIZING THE PROPERTY; AMENDING SECTIONS 15-16-102, 15-16-113, 15-16-117, 15-16-301, 15-16-303, 15-16-401, 15-16-402, 15-16-404, 15-17-122, AND 15-17-911, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-16-102, MCA, is amended to read:

**"15-16-102. Time for payment — penalty for delinquency.** *Unless suspended or canceled under the provisions of [section 11], all* taxes

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levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) If the taxes become delinquent, the county treasurer may accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest."

Section 2. Section 15-16-113, MCA, is amended to read:

**"15-16-113. Personal property — duty of treasurer — penalty.** (1) The county treasurer shall collect taxes on all personal property and, in the case provided in 15-16-111, shall immediately upon receipt of the report prescribed by 15-16-111 notify the person or persons against whom the tax is assessed and any person who has a properly perfected security interest of record with the department of justice that the amount of the tax is due and payable at the county treasurer's office.

(2) The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff.

(3) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. The sheriff may receive the same fees as he is entitled to in making a seizure and sale as provided in 15-17-911.

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(4) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

(5) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax.

*(6) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of [section 11].*"

Section 3. Section 15-16-117, MCA, is amended to read:

"**15-16-117. Personal property — treasurer's duty to collect certain taxes.** (1) The county treasurer shall demand payment of poor taxes, authorized by 53-2-321, and road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, of every person liable therefor whose name does not appear on the assessment lists. On the neglect or refusal of any such person to pay the same, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) These taxes must be added upon the assessment lists to other property taxes of persons paying taxes upon real and personal property and paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of such property by the county treasurer for such taxes must be regulated by 15-16-113 and 15-17-911.

*(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of [section 11].*"

Section 4. Section 15-16-301, MCA, is amended to read:

"**15-16-301. Delinquent list — list of taxes suspended or canceled — real property.** *(1)* On the third Monday of December and on the third Monday of June of each year, the county treasurer must make a report to the county clerk and recorder in detail, showing the amount of taxes collected and a complete list of all persons and property then owing taxes.

*(2) The county treasurer must make a separate report to the county clerk and recorder showing the amount of taxes suspended or canceled under the provisions of [section 11] during the 6-month period immediately preceding the date of the report.*

*(3)* The county clerk and recorder shall compare the *reports* with the books of the county treasurer and shall keep a record of the *reports* in his office."

Section 5. Section 15-16-303, MCA, is amended to read:

"**15-16-303. Treasurer charged with delinquent taxes.** After settlement with the county treasurer as prescribed in 15-16-302, the county

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clerk and recorder must charge the treasurer with the amount of taxes due on the delinquent tax list, *minus taxes suspended or canceled under the provisions of [section 11]*, and within 3 days thereafter deliver the list, duly certified, to the county treasurer."

Section 6. Section 15-16-401, MCA, is amended to read:

**"15-16-401. Tax due as a judgment or lien.** *Unless suspended or canceled under the provisions of [section 11], every* tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes, *unless suspended or canceled under the provisions of [section 11]*, and deliver the writ to the sheriff. The sheriff shall thereupon proceed upon the writ in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and shall be entitled to the fees provided for in 15-17-911. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof."

Section 7. Section 15-16-402, MCA, is amended to read:

**"15-16-402. Tax on personal property lien on realty — separate assessment.** (1) Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof on and after January 1 of each year.

(2) The taxes upon personal property based upon a taxable value up to and including $1,000 shall be a first and prior lien upon the real property of the owner of such personal property. Taxes upon personal property based upon the taxable value thereof in excess of $1,000 shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and recorder of the county where such real property is situated, at or before the time such personal property tax attached thereto, shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of $1,000 of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including $1,000. Personal property taxes upon a taxable value up to $1,000 may be paid, redeemed from a tax sale as by law provided, or discharged separately from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to $1,000, as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(3) The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving:

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(a) the name and address of the mortgagee and holder of the mortgage or lien;

(b) the name of the reputed owner of the land;

(c) the description of the land;

(d) the date of record and expiration of the mortgage or lien;

(e) the amount thereof; and

(f) a statement that he claims the benefit of the provisions of this section.

(4) Such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually unless the mortgage be extended for a definite period to be stated in such notice.

(5) Any owner of a mortgage on real estate upon which personal property taxes are by this section made a lien, where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for 1 or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered or certified mail at least 10 days prior to January 1 in the year for which property is assessed. Upon receipt by the department or its agent of such request, it is hereby made the duty of the department or its agent to make a separate assessment of real and personal property of the owner thereof, and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof, and the personal property taxes shall be collected in the manner provided by law for other personal property.

*(6) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of [section 11].*"

Section 8. Section 15-16-404, MCA, is amended to read:

"**15-16-404. County lien on moneys of taxpayer.** The county has a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due the county for any delinquent personal property taxes *that are* not a lien on real estate of the taxpayer *and that are not delinquent personal property taxes suspended or canceled under the provisions of [section 11].* Due notice shall be given the lien holder, if known."

Section 9. Section 15-17-122, MCA, is amended to read:

"**15-17-122. Notice of pending tax sale.** (1) The county treasurer shall publish or post a notice of pending tax sale. The notice must include:

(a) the specific time, date, and place an interest in the property on which the taxes are delinquent will be offered for sale;

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(b) a statement that the delinquent taxes, including penalties, interest, and costs, are a lien upon the property and that unless the delinquent taxes, penalties, interest, and costs are paid prior to the time of the tax sale, the lien will be offered for sale at the time and place specified in subsection (1)(a).

(2) The notice required in subsection (1) must also include a statement that a list of each property on which the taxes are delinquent is on file in the office of the county treasurer and open to inspection. The list must include:

(a) the name and address of the person to whom the delinquent taxes are assessed;

(b) the amounts of the delinquent taxes, all accrued penalties, interest, and other costs; and

(c) a statement that penalties, interest, and costs will be added to delinquent taxes.

(3) The notice must be published once a week for 3 consecutive weeks in the newspaper designated for county printing as provided in 7-5-2411. If no newspaper is published in the county, the notice must be posted by the county treasurer in three public places. The notice must be first published or posted on or before the last Monday in June.

(4) Except as provided in 15-17-211(2), the sale may not be held less than 21 days or more than 28 days from the date of first publication or first day the notice is posted.

(5) The sale must be held at the county courthouse.

(6) Property on which taxes are delinquent but for which proper notification was not made may not be included in the current year's notice and sale. In the event of improper notification, the sale may be held on all property properly noticed.

*(7) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of [section 11].*"

Section 10. Section 15-17-911, MCA, is amended to read:

"**15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property.** (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-113 and this section apply to a seizure and sale under subsection (1).

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(3) A sale under subsection (1) must be at public auction. The minimum bid for any property offered for sale must be of a sufficient amount to pay the delinquent taxes, including penalties, interest, and costs.

(4) For seizing and selling personal property, the treasurer shall charge $25, plus the mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property so seized. The charge and other costs may be charged only when property is actually seized and offered for sale or sold.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) All money collected from the sale of property in liquidation of the delinquency, including delinquent taxes, penalties, and interest but not costs, must be credited by the treasurer to the appropriate funds.

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it thereafter.

(7) Any property seized for the purpose of liquidating a delinquency by a tax sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

*(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of [section 11].*"

Section 11. **Suspension and cancellation of collection of certain property taxes on commercial property — local government discretion.** (1) The governing body of a county or consolidated local government unit may suspend collection of delinquent property taxes on commercial property to facilitate the purchase and continued operation of a business utilizing the commercial property if the property has not been used in a business for 6 months immediately preceding the date of suspension.

(2) The governing body may refuse to suspend delinquent taxes if it determines that the purchase of the commercial property is not an arm's length transaction or if the purchase otherwise appears to be a restructuring of ownership for the primary purpose of escaping payment of delinquent property taxes or if the governing body determines the cancellation is not in the best interest of the county.

(3) If a purchaser of such commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase, the governing body may cancel the collection of the suspended delinquent property taxes. The governing body may not cancel the suspended delinquent property taxes if the purchaser is delinquent

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on taxes for any other property within the governing body's taxing jurisdiction.

(4) (a) In order for the governing body to grant a suspension or cancellation of delinquent property taxes pursuant to this section, it shall adopt a resolution after:

(i) providing notice, as set forth in 7-1-2121;

(ii) holding a public hearing; and

(iii) notifying the governor's office of budget and program planning and the department of revenue about a proposed action to suspend or cancel delinquent property taxes. The governor's office of budget and program planning and the department of revenue shall consult with the governing body regarding the impact on programs that would result from the proposed granting of the suspension or cancellation of the delinquent property taxes, and the governing body shall consider the information before reaching a final decision.

(b) The resolution must state that the suspension or cancellation is in the best interest of the people of the county or consolidated local government, based on full disclosure of all pertinent financial information by the new owner as required by the local government.

(5) The suspension or cancellation of delinquent property taxes pursuant to this section:

(a) applies to all mills levied in the county or otherwise required under state law, including levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, and 20-25-423;

(b) does not apply to assessments made against property for the payment of bonds issued pursuant to Title 7, chapter 12.

Section 12. **Payment of suspended delinquent property taxes.** If collection of delinquent property taxes has been suspended in accordance with [section 11] but the purchaser of the commercial property fails to comply with any of the provisions of the resolution granting suspension under [section 11], the governing body that adopted the resolution may revoke the suspension. Upon revocation, the tax lien for the delinquent taxes, penalties, and interest is reinstated. Penalties and interest are to be calculated from the date of delinquency as if there had been no suspension of collection of the delinquent taxes.

Section 13. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 14. **Codification instruction.** (1) [Section 11] is intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15 apply to [section 11].

(2) [Section 12] is intended to be codified as an integral part of Title 15, chapter 16, and the provisions of Title 15 apply to [section 12].

Section 15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of

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[this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1983.

Section 17. **Termination date.** [This act] terminates December 31, 1993.

Approved April 25, 1989.

## CHAPTER NO. 632

[HB 354]

AN ACT ESTABLISHING A LEGISLATIVE COMMITTEE TO CONSIDER ISSUES RELATED TO THE GOVERNANCE AND FUNDING OF POSTSECONDARY EDUCATION; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, postsecondary education provides opportunities for the citizens of Montana to develop their educational potential; and

WHEREAS, as a result of the work of the University Funding Study Committee during the 1989 biennium, valuable conclusions were reached regarding the reliability and use of peer data and the level of funding for Montana postsecondary education institutions relative to peer institutions; and

WHEREAS, the conclusions reached on peer data have removed a major impediment to working cooperatively on elements of the higher education funding formula and have changed the direction for Montana University System budgeting; and

WHEREAS, the relationship between the Montana University System and the Legislature has been significantly improved by the work of the University Funding Study Committee; and

WHEREAS, further work is needed to more fully develop new budgeting formulas and to complete work on personnel and classroom enrollment systems; and

WHEREAS, the balance from the $150,000 appropriated by the 1987 Legislature to conduct the university funding study may be expended to support the costs of a postsecondary education study committee.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Postsecondary education study committee — establishment — appointment — staff assistance.** (1) There is a postsecondary education study committee comprised of four members of the

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senate appointed by the committee on committees and four members of the house of representatives appointed by the speaker. Not more than two members from either house may be from the same political party. In case of a vacancy, a replacement must be appointed by the appointing authority who appointed the member whose absence resulted in the vacancy.

(2) The study must be coordinated by the office of the legislative fiscal analyst in conjunction with the commissioner of higher education and with active participation of the office of budget and program planning.

Section 2. **Committee to conduct study.** The postsecondary education study committee shall, in cooperation with the board of regents and the governor, examine:

(1) the governance and funding of postsecondary education;

(2) the duplication of functions and programs among the postsecondary education institutions;

(3) the policy questions surrounding the issues of "priority of access" versus "excellence"; and

(4) the development and implementation of uniform personnel and classroom enrollment systems for postsecondary education institutions.

Section 3. **Appropriation.** The balances remaining as of June 30, 1989, in the appropriations included in House Bill No. 2, Laws of 1987, to the commissioner of higher education, the office of the legislative fiscal analyst, and the office of budget and program planning for the university funding study are appropriated to the respective agencies for the biennium ending June 30, 1991, for the purpose of supporting the costs of the postsecondary education study committee.

Section 4. **Effective date — termination.** [This act] is effective July 1, 1989, and terminates June 30, 1991.

Approved April 25, 1989.

# CHAPTER NO. 633

[HB 663]

AN ACT TO INCLUDE HOSPICE CARE AS A MANDATORY MEDICAID SERVICE; AMENDING SECTION 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-6-101, MCA, is amended to read:

**"53-6-101. Definition of medical assistance.** (1) The definition of medical assistance shall include:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing home services;

(e) physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere;

*(f) hospice care as defined in 42 U.S.C. 1396d(o); and*

*(g)* services provided by nurse specialists, as specifically listed in 37-8-202(5), within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider.

(2) It may also include, although not necessarily limited to, the following:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy and other related services;

(f) clinic services;

(g) services provided by social workers licensed under Title 37, chapter 22;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) any additional medical service or aid allowable under or provided by the federal Social Security Act."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective July 1, 1989.

Section 4. **Termination.** [This act] terminates June 30, 1991.

Approved April 25, 1989.

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# CHAPTER NO. 634

[HB 759]

AN ACT TO APPROPRIATE MONEY TO MATCH FEDERALLY APPROPRIATED FUNDS FOR CONSTRUCTION AND STARTUP OPERATING COSTS FOR MEDICAL RESEARCH FACILITY PROJECTS IN THIS STATE; TO AUTHORIZE THE MONTANA SCIENCE AND TECHNOLOGY DEVELOPMENT BOARD TO ADMINISTER THE APPROPRIATION; TO ESTABLISH GOALS AND CRITERIA FOR THE BOARD TO USE IN MAKING GRANTS OF APPROPRIATED FUNDS; TO PROVIDE THE BOARD WITH RULEMAKING AUTHORITY TO IMPLEMENT THE PROVISIONS OF THIS ACT; AMENDING SECTION 17-5-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2(5)] grants rulemaking authority to the Montana science and technology development board to implement the grant provision of [sections 1 and 2]. It is the legislature's intent that the board adopt rules establishing application procedures, the review process to be followed by the board in making a grant, and disbursement procedures.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated from the income and earnings on the coal severance tax permanent fund that otherwise would be appropriated to the coal severance tax permanent fund under 17-5-704 the amount of $2 million to the medical research facility projects account established in [section 2] for the biennium ending June 30, 1991. The money is to be used to match federally appropriated funds on at least a four-to-one federal-to-state matching basis for construction and startup operating costs for medical research facility projects in the state. The Montana science and technology development board shall administer the appropriation.

Section 2. **Medical research facility projects account — allocation of funds — goals and criteria — rulemaking.** (1) There is a medical research facility projects account in the state special revenue fund into which must be deposited the money appropriated in [section 1].

(2) Notwithstanding any provision of Title 90, chapter 3, the Montana science and technology development board may award grants of the money appropriated under [section 1] for the purposes described in [section 1].

(3) The board may award a grant to a medical research facility project if the project proposal meets the following goals:

(a) The project is designed to establish an advanced medical research facility that will be funded sufficiently to become an enduring research presence in the state.

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(b) The project concentrates on fields of medical research that involve advanced technology applied to national medical concerns.

(c) The project is designed to recruit and retain in the state medical researchers of nationally recognized stature.

(4) The board, at a minimum, shall use the following criteria in awarding a medical research facility grant:

(a) State funds for construction and startup operating costs must be matched on at least a four-to-one federal-to-state matching basis with federal funds appropriated for the same purpose.

(b) The project proposal includes an effective construction and operating plan that provides a sound basis for ongoing operation of the facility.

(c) The personnel, equipment, and research operation of the facility are sufficient to earn and maintain a nationally recognized stature.

(5) The board may adopt rules to implement the purposes of [sections 1 and 2].

Section 3. Section 17-5-704, MCA, is amended to read:

**"17-5-704. Investment of funds.** (1) Money in the coal severance tax bond fund, the coal severance tax permanent fund, and the coal severance tax income fund must be invested in accordance with the investment standards for coal severance tax funds except as provided in *subsections* (2) *and (3).* Income and earnings from all funds must be transferred to and retained in the coal severance tax income fund until appropriated by the legislature.

(2) Beginning on July 1, 1987, the legislature shall appropriate 2% of the income and earnings from all funds to be deposited to the coal severance tax permanent fund each year.

(3) *Except as provided in [section 1], beginning* on July 1, 1989, the legislature shall appropriate 15% of the income and earnings from all funds to be deposited to the coal severance tax permanent fund each year. The funds appropriated to the coal severance tax permanent fund under this subsection may not be further appropriated except by vote of three-fourths of the members of each house of the legislature."

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved April 25, 1989.

# CHAPTER NO. 635

[HB 792]

AN ACT CLARIFYING THAT AMATEUR RADIO OPERATORS' SPECIAL LICENSE PLATES ARE IN LIEU OF REGULAR LICENSE PLATES; AMENDING SECTIONS 61-3-421, 61-3-422, AND 61-3-425, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-421, MCA, is amended to read:

**"61-3-421. Amateur radio operators — special license plate.** *A* motor vehicle owner and resident of this state who holds an unrevoked and

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unexpired official amateur radio station license and operator's license, "conditional" or higher class, issued by the federal communications commission of the United States, upon written application on *a* form prescribed by the department, accompanied by proof of ownership of *the* amateur radio station license and operator's license, *must* be issued lettered license plates in pairs (two identically lettered plates), in *lieu of* the regular license plates prescribed by law. There *must* be stamped or impressed upon *the* special license plates in clear lettering the official amateur radio call letters of *the* owner as assigned to *the* owner by *the* federal communications commission, and *the* plates so lettered *must* be renewed *as provided in 61-3-312.*"

Section 2. Section 61-3-422, MCA, is amended to read:

"**61-3-422. Issuance — application — additional fee.** The department shall issue lettered license plates *as provided in 61-3-421* to amateur radio operators upon:

*(1)* application showing proof that *the* applicant is the owner and holder of *an* amateur radio station license and operator's license;

(2) compliance with the state motor vehicle laws relating to registration and licensing of motor vehicles;

*(3)* payment, or proof of payment, of *all other fees and taxes applicable to* regular *motor vehicle* license plates; and

*(4)* payment of a $5 additional fee."

Section 3. Section 61-3-425, MCA, is amended to read:

"**61-3-425. Special plates — how affixed to car — sale or transfer of auto — revocation or expiration of radio license.** The lettered license plates, as herein provided, are *in lieu of* the regular license plates on the motor vehicle owned by *the* amateur radio licensee for *the* period of time *that* the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. *If the* official amateur radio license is revoked or expires for *any* reason, *the* license plate *must* be removed immediately by the owner of the motor vehicle, and *it is the responsibility of the owner to then obtain regular license plates. If* the motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's *licenses has* the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the department. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued *must* be returned and surrendered to the department."

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Applicability.** [This act] applies to registrations of motor vehicles for years beginning after December 31, 1989.

Approved April 25, 1989.

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# CHAPTER NO. 636

[HB 703]

AN ACT REVISING THE SALES ASSESSMENT RATIO STUDY PROCEDURES FOR DETERMINING THE CORRECT ASSESSMENT LEVEL FOR SIMILAR PROPERTY LOCATED IN SPECIFIC AREAS OF THE STATE; REQUIRING THE DEPARTMENT OF REVENUE TO ANNUALLY PUBLISH THE RESULTS OF SALES ASSESSMENT RATIO STUDIES; REVISING THE REAPPRAISAL PLAN REQUIREMENTS; AMENDING SECTIONS 15-7-102, 15-7-111, AND 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-7-102, MCA, is amended to read:

**"15-7-102. Notice of classification and appraisal to owners — appeals.** (1) It shall be the duty of the department of revenue to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased by him and the appraisal of the improvements *on the land* only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) The notice of classification and appraisal provided by the department under subsection (1) must be on a standardized form adopted by the department containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of his property and of changes over the prior tax year.

(3) If the owner of any land and improvements is dissatisfied with the appraisal or classification of his land or improvements, he may submit his objection in writing to the department's agent. The department shall give reasonable notice to *the* taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at *that* time and afford the opportunity to other interested persons to produce evidence at *the* hearing. *After the hearing*, the department shall determine the true and correct appraisal and classification of *the* land or improvements and notify the taxpayer of its determination. In the notification, the department must state its reasons for revising the classification or appraisal. When *the proper appraisal and classification have been* determined, the land shall be classified and *the* improvements appraised in the manner ordered by the department.

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(4) Whether a hearing as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted his objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make *the* records available for inspection during regular office hours.

(6) If any property owner *feels* aggrieved at the classification and/or the appraisal made by the department, he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board, whose findings shall be final subject to the right of review in the courts. *The* property owner may appeal the base year valuation and *the* classification determination. *The* property owner may not appeal the yearly percentage adjustments that are specified in 15-7-111 and that may be made as a result of the sales assessment ratio study, the stratum, or area designations as specified in 15-7-111.

*(7) The percentage adjustments, stratum, and area designations must be adopted by administrative rule. An annual hearing must be held to accept testimony on the percentage adjustments, stratum, and area designations. The department shall present its findings and the proposed rules to the revenue oversight committee.*"

Section 2. Section 15-7-111, MCA, is amended to read:

"**15-7-111. Periodic revaluation of taxable property — publication of sales assessment ratio studies — appeal of revaluations.** (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 5 years. A comprehensive written reappraisal plan shall be promulgated by the department. The reappraisal plan adopted shall provide that all property in each county shall be revalued at least every 5 years. The department shall furnish a copy of the plan and all amendments *to the plan* to the board of county commissioners in each county.

(2) The new values determined during a revaluation cycle must be provided to the taxpayers at the end of the revaluation cycle but may not be placed on the tax rolls until 1 year following the completion of the revaluation cycle.

(3) A taxpayer shall appeal the new value in advance of its placement on the tax rolls by filing an appeal pursuant to 15-15-102 before the first Monday in June or 15 days after receiving notice of the new valuation amount, whichever is later, or be barred from appealing for untimeliness.

(4) For the taxable year beginning January 1, *1990*, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential *land and improvements, agricultural*

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*1-acre homesites and improvements, and commercial land and improvements. The sales assessment ratio based on property sales finalized and recorded by no later than November 1 must be used to determine appraisals for the immediately succeeding tax year.*

(5) The study required in subsection (4) must be based on:

(a) *commonly accepted statistical* standards and methodology;

*(b)* a statistically valid sample of sales, using data from realty transfer certificates filed for *up to 3* taxable *years prior to the year the study is made, taking into account the dates of the included sales in the statistical analysis*; and

*(c)* the assessments and sales for areas of the state that are economically, demographically, and geographically similar in order to determine the sales assessment *ratios* for a specific area.

(6) For purposes of conducting the study required by subsection (4), the *department shall partition the state into as many as 100 areas for residential property and as many as 20 areas for commercial property. The areas must contain statistically sufficient numbers of sales and be as economically and demographically homogeneous as reasonably practicable.*

*(7)* The department shall use the following procedure to validate sales information:

(a) Department staff *who did not participate in the determination of appraised values* are required to review *the* sales *transactions* evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale *used in the study* was a valid, arm's-length transaction. Only valid, arm's-length sales may be used in the sales assessment ratio study.

(b) The sales information *entered in* the computer-assisted appraisal system is considered confidential, as provided in 15-7-308. *However, the department shall annually publish a report containing the results of all sales assessment ratio studies done in each of the areas described in subsection (6). The report containing the results of the study must be made available to the public by request or by general disclosure.*

(c) The department shall exclude from the sales assessment ratio study any parcels in which the improvements have been remodeled, reconstructed, or expanded *between the time of* the assessment *and the time of the sales.*

(d) The department shall exclude sales assessment ratios of less than 50% or greater than 200%.

*(8) (a)* The department shall have equalized property values throughout the state *and may not make further adjustments to values under this section* when the *assessments* for each stratum within each area identified in subsection (6) *are rescaled to bring all ratios to common value 1 and when the sample size produces a standard error of less than 5%*;

*(b) Under the method described in subsection (8)(a), taxable property in each area is considered revalued for each tax year, based on the results of*

*the sales assessment ratio study and the adjustments required by that study.*

*(c) Assessments in an area are considered equalized under subsection (8)(a) if the ratio for the area is within plus or minus 5% of common value 1.*"

Section 3. Section 15-10-412, MCA, is amended to read:

**"15-10-412. (Temporary) Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, *except as otherwise provided in this section,* the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements*; or*

*(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.*

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) construction, expansion, replacement, or remodeling of improvements that adds value to the property;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; *or*

*(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.*

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the previous tax year. If a taxing unit's taxable valuation decreases by 5% or more from the previous tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

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(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) electric company street lighting assessments; and

(h) revolving funds to support any categories specified in this subsection (8).

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity. **(Terminates December 31, 1989—sec. 6, Ch. 654, L. 1987.)**"

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Coordination instruction.** If [this act] and Senate Bill No. 65 are passed and approved, the amendment to 15-10-412(3)(i) in Senate Bill No. 65 and the language in the amendment to Senate Bill No. 65 inserting 15-10-412(4)(a)(ii) that reads "or a sales assessment ratio study" are void.

Section 6. **Effective date — applicability.** [This act] is effective on passage and approval and applies to taxable years beginning after December 31, 1989.

Approved April 28, 1989.

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# CHAPTER NO. 637

[HB 783]

AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO NEGOTIATE WITH FINANCIAL INSTITUTIONS TO ALLOW THE STATE TO BE THE SPONSORING ENTITY FOR A FINANCIAL INSTITUTION CREDIT CARD; PROVIDING THAT THE FEE NEGOTIATED BY THE DEPARTMENT IN EXCHANGE FOR BEING A SPONSORING ENTITY BE DEPOSITED IN THE GENERAL FUND AND THE SCHOOL EQUALIZATION FUND; GRANTING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature that the department of revenue adopt rules necessary to implement the Montana state-sponsored credit card program. The rules may include provisions governing the procedures for contacting financial institutions to determine if they would accept the state as a sponsoring entity for a credit card program and for negotiating the rate for the state's fee.

In participating in a credit card program, the state may contract with a number of financial institutions to establish the state as a sponsoring entity. The state may not contract to assume any liability for lost or stolen credit cards.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **State-sponsored credit card — distribution of proceeds.** (1) The department of revenue is authorized to participate in a financial institution credit card program for the benefit of the state. Within 180 days of [the effective date of this act], the department shall contact each financial institution to determine if:

(a) the financial institution or its holding company or affiliate currently administers a credit card program;

(b) the credit card program provides a fee or commission on retail sales to the sponsoring entity for the issuance and use of the credit card; and

(c) the credit card program would accept the state as a sponsoring entity.

(2) If the department determines that the state may be a sponsoring entity for a financial institution credit card, the department shall negotiate the most favorable rate for the state's fee by a credit card issuer. The state may not offer a more favorable rate to any credit card issuer. The rate must be expressed as a percentage of the gross sales from the use of the credit card. The proceeds of the fee must be deposited one-half in the general fund and one-half in the state special revenue fund for state equalization aid to public schools.

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(3) The department may adopt rules necessary to implement the credit card program.

(4) As used in this section, the following definitions apply:

(a) "Financial institution" means a bank chartered under Title 32, chapter 1; a bank chartered under the National Bank Acts in Title 12 of the United States Code; a building and loan association chartered under Title 32, chapter 2; a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code; a credit union chartered under Title 32, chapter 3; or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code.

(b) "Financial institution credit card" means a credit card that entitles the holder to make open-account purchases up to an approved amount and is issued through the agency of a financial institution.

(c) "Sponsoring entity" means an entity that solicits the use of a particular financial institution credit card bearing the entity's name in exchange for a fee from the credit card issuer.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1989.

# CHAPTER NO. 638

[HB 569]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO SCHOOL DISTRICT PUPIL-INSTRUCTION-RELATED DAYS AND INSTRUCTIONAL AND PROFESSIONAL DEVELOPMENT FOR TEACHERS; AMENDING SECTIONS 20-1-304 AND 20-4-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-1-304, MCA, is amended to read:

"**20-1-304. Pupil-instruction-related day.** A pupil-instruction-related day *is* a day of teacher activities devoted to improving the quality of instruction. *The* activities may include but are not limited to in-service training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, *with a minimum of 3 of the days for instructional and professional development meetings or other appropriate in-service training,* provided that *the* days are approved by the superintendent of public instruction in accordance with the policy adopted by the

board of public education. *The* days *may* not be included as a part of the required minimum of 180 days of pupil instruction."

Section 2. Section 20-4-304, MCA, is amended to read:

**"20-4-304. Attendance at instructional and professional development meetings.** *The* trustees of a school district *shall* close the schools of the district for the annual *instructional and professional development meetings of teachers' organizations. A* teacher may attend *instructional and professional development meetings* without loss of salary or *attend other appropriate in-service training,* as may be prescribed by the trustees, without loss of salary. If a teacher does neither, he *must* not be paid."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective July 1, 1990.

Approved April 29, 1989.

# CHAPTER NO. 639

[HB 401]

AN ACT AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO PERMIT PROBATION AND PAROLE OFFICERS TO CARRY FIREARMS; REQUIRING THE DEPARTMENT TO ADOPT RULES CONCERNING CARRYING OF FIREARMS; PERMITTING A PROBATION AND PAROLE OFFICER TO CARRY A CONCEALED WEAPON; APPROPRIATING MONEY FOR TRAINING, SUPPLIES, AND EQUIPMENT; AMENDING SECTIONS 45-8-317 AND 46-23-1002, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it requires the department of institutions to adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms by probation and parole officers. The legislature intends that these rules address but not be limited to the following:

(1) required firearms training courses and certification procedures;

(2) types of firearms to be carried by officers;

(3) procedures for requesting the carrying of a firearm for performing a specific duty;

(4) circumstances under which the carrying of a firearm is permitted or prohibited;

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(5) control and storage of firearms purchased by the department; and

(6) procedures for monitoring and documenting the use of a firearm in performance of an official duty.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 46-23-1002, MCA, is amended to read:

**"46-23-1002. Powers of the department.** The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

*(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.*

*(3)* adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court."

Section 2. Section 45-8-317, MCA, is amended to read:

**"45-8-317. Exceptions.** Section 45-8-316 does not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

*(6) a probation and parole officer authorized to carry a firearm under 46-23-1002;*

*(7)* a person authorized by a judge of a district court of this state to carry a weapon; or

*(8)* the carrying of arms on one's own premises or at one's home or place of business."

Section 3. **Appropriation.** The following money is appropriated from the general fund to the department of institutions for firearms training, supplies, and equipment:

| | FY 1990 | FY 1991 |
|---|---|---|
| Training Supplies | | |

Equipment
Total

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved April 11, 1989.

# CHAPTER NO. 640

[SB 209]

AN ACT TO INCREASE THE SALARY SCHEDULE OF COURT REPORTERS AND TO REVISE COURT FILING FEES THAT ARE APPLIED TO COURT REPORTERS' SALARIES; AMENDING SECTIONS 3-5-602 AND 25-1-202, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 3-5-602, MCA, is amended to read:

**"3-5-602. Salary and expenses — apportionment.** (1) Each reporter is entitled to receive a base annual salary of not less than *$23,000* or more than *$25,000* and no other compensation except as provided in 3-5-604. The salary shall be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed and out of an appropriation made to the department of commerce as provided in subsection (2).

(2) The department of commerce shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his or their district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when he goes on official business to a county of his judicial district other than the county in which he resides, from the

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time he leaves his place of residence until he returns. The expenses shall be apportioned and payable in the same way as the salary."

Section 2. Section 3-5-602, MCA, is amended to read:

**"3-5-602. Salary and expenses — apportionment.** (1) Each reporter is entitled to receive a base annual salary of not less than *$23,000* or more than *$30,000* and no other compensation except as provided in 3-5-604. The salary shall be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed and out of an appropriation made to the department of commerce as provided in subsection (2).

(2) The department of commerce shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in his or their district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), his actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. The expenses shall be apportioned and payable in the same way as the salary."

Section 3. Section 25-1-202, MCA, is amended to read:

**"25-1-202. Fee for court reporter.** *In addition to other filing fees, a fee of $10 must be paid to the clerk of the district court at the time of filing a civil action in the district court. The fee* must be paid by *the* clerk into the treasury of the county where the *action is filed,* to be applied *to* the payment of the salary of the reporter. The prevailing party may have the amount paid by him taxed in his bill of costs as proper disbursements."

Section 4. **Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1989.

(2) [Section 2] is effective July 1, 1991.

Approved May 5, 1989.

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# CHAPTER NO. 641

[SB 315]

AN ACT GENERALLY REVISING THE LAW RELATING TO WORKERS' COMPENSATION; REQUIRING THE STATE WORKERS' COMPENSATION INSURANCE FUND AND PRIVATE WORKERS' COMPENSATION INSURERS TO ALLOW AN EMPLOYER THE OPTION OF INCLUDING A MEDICAL DEDUCTIBLE TERM IN ANY WORKERS' COMPENSATION POLICY; PROVIDING THAT BENEFITS PAID UNDER A MEDICAL DEDUCTIBLE TERM MAY NOT BE INCLUDED BY THE STATE WORKERS' COMPENSATION INSURANCE FUND FOR THE PURPOSE OF SETTING AN EMPLOYER'S INSURANCE RATE; AMENDING SECTION 39-71-2304, MCA; CONTINGENTLY REPEALING CHAPTER 428, LAWS OF 1989; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Deductible option for medical benefits.** (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 or by a private insurer under plan No. 2 may offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of $500 increments, up to a total of $2,500 per claim.

(2) If the insured employer chooses to offer a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury suffered by an employee.

(3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the covered medical benefits directly to the provider of medical or related services and then seek reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

(4) If an insured employer who has contracted with an insurer for a medical deductible does not pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the claim may be included as benefits paid in a determination of the insured employer's rate.

Section 2. Section 39-71-2304, MCA, is amended to read:

**"39-71-2304. Determination of rates and classifications by division.** (1) The division *shall* determine premium rates and classifications as in its judgment and experience may be necessary or expedient. *However, a* change in the classification or rates prescribed *may not* be effective until 30 days after the date of the order making *the* change.

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(2) The industrial insurance program *must* be neither more nor less than self-supporting. Employments affected by the provisions *of this chapter must* be divided by the division into classes, whose rates may be readjusted at times as the division may actuarially determine. Separate accounts *must* be kept of the amounts collected and expended in each class for actuarially determining rates, *except that the money paid under the medical deductible provided for in [section 1] may not be included as an amount collected. However,* for payment of compensation and dividends, the industrial insurance expendable trust fund *must* be one and indivisible.

(3) The division shall determine the hazards of the different classes of occupations or industries and fix the premiums *for the classes* at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for *that* purpose may adopt a system of schedule rating in a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it. *To the extent that a hazard of a class or a peculiar hazard of a particular risk is determined by benefits paid in regard to the hazard, money paid under a medical deductible as provided in [section 1] may not be included as benefits paid.*

(4) In addition, compensation plan No. 3 *must* use an experience rating system for employers enrolled under it. This system *must* reward employers with a better than average safety record *and* penalize employers with a worse than average safety record and may provide for premium volume discount. *To the extent that an employer's experience rating or safety record is based on benefits paid, money paid under a medical deductible as provided in [section 1] may not be included as benefits paid so as to penalize an employer or otherwise harm or lower his experience rating.*

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance expendable trust fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and *any* other reserves and surplus as may be determined by the division. The amounts of *the* reserves and surplus *must* be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

(6) The division shall charge a minimum annual premium on each contract and policy of insurance sufficient to cover the cost of administering the contract or policy."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].

Section 5. **Applicability.** [This act] applies to workers' compensation policies issued after September 30, 1989, unless an employer and insurer

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agree to renegotiate a workers' compensation policy in effect on [the effective date of this act] to include a term allowing for a medical deductible.

Section 6. **Contingent repealer.** If Senate Bill No. 405 is not passed and approved, Chapter 428, Laws of 1989, is repealed.

Approved May 5, 1989.

# CHAPTER NO. 642

[SB 431]

AN ACT GENERALLY REVISING THE PUBLIC GAMBLING LAWS OF MONTANA; PROVIDING FOR LICENSURE AND REGULATION OF GAMBLING ACTIVITIES BY THE DEPARTMENT OF JUSTICE; PROVIDING FOR AN APPROPRIATION AND A STATUTORY APPROPRIATION; PROVIDING FOR A GAMING ADVISORY COUNCIL; AMENDING SECTIONS 17-7-502, 23-5-101 THROUGH 23-5-104, 23-5-108, 23-5-123, 23-5-131, 23-5-135, 23-5-311 THROUGH 23-5-313, 23-5-321, 23-5-331, 23-5-412 THROUGH 23-5-414, 23-5-431, 23-5-503, 23-5-509, 23-5-602, 23-5-603, 23-5-607, 23-5-608, 23-5-610 THROUGH 23-5-613, 23-5-616, 23-5-625, 23-5-631, 23-5-1101, AND 23-5-1105, MCA; REPEALING SECTIONS 23-5-105 THROUGH 23-5-107, 23-5-109, 23-5-121, 23-5-122, 23-5-124 THROUGH 23-5-127, 23-5-132 THROUGH 23-5-134, 23-5-141 THROUGH 23-5-144, 23-5-201 THROUGH 23-5-211, 23-5-301 THROUGH 23-5-303, 23-5-314 THROUGH 23-5-316, 23-5-322, 23-5-323, 23-5-332, 23-5-401 THROUGH 23-5-403, 23-5-411, 23-5-415 THROUGH 23-5-418, 23-5-421 THROUGH 23-5-423, 23-5-504 THROUGH 23-5-508, 23-5-510, 23-5-511, 23-5-601, 23-5-605, 23-5-606, 23-5-609, 23-5-615, 23-5-617, 23-5-618, 23-5-626, 23-5-627, 23-5-635, 23-5-636, 23-5-1103, AND 23-5-1104, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

This bill requires a statement of intent because [section 7] authorizes the department of justice to adopt administrative rules to implement [this act]. [This act] is intended to provide uniform statewide regulation of gambling in Montana under the supervision of the attorney general.

It is the intent of the legislature that the department of justice adopt necessary rules to implement uniform statewide regulation of gambling in Montana consistent with the purposes and policies set forth in [section 1] of this bill.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Public policy of state concerning gambling.** (1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

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(a) create and maintain a uniform regulatory climate that assures players, owners, tourists, citizens, and others that the gambling industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;

(b) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;

(c) protect the public from unscrupulous proprietors and operators of gambling establishments, games, and devices;

(d) protect the state and local governments from those who would conduct illegal gambling activities that deprive those governments of their tax revenues;

(e) protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating gambling activities; and

(f) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families.

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through 6 of this chapter does not have a right to the issuance of a license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through 6 of this chapter is a privilege revocable only for good cause. A holder does not acquire a vested right in the license or permit issued or other department approval granted. A license or permit issued under parts 1 through 6 of this chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through 6 of this chapter must be derived solely from fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry.

Section 2. **General application.** This chapter applies only to public gambling activities within the state of Montana.

Section 3. Section 23-5-101, MCA, is amended to read:

**"23-5-101. Definitions.** *Unless the context requires otherwise, the following definitions apply to parts 1 through 6 of this chapter:*

(1) *"Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 6 of this chapter.*

*(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.*

*(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.*

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*(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. No more than 75 numbers may be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.*

*(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.*

*(6) "Card game table" or "table" means a live card game table authorized by permit and made available to the public on the premises of a licensed gambling operator.*

*(7) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.*

*(8) "Department" means the department of justice.*

*(9) "Distributor" means a person who:*

*(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and*

*(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.*

*(10) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.*

*(11) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.*

*(12) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.*

*(13) "Gross proceeds" means gross revenue received less prizes paid out.*

*(14) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department.*

*(15) "Illegal gambling enterprise" means a gambling enterprise that violates a statute or a rule of the department.*

*(16) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.*

*(17) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.*

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*(18) "License" means an operator's, dealer's, or manufacturer-distributor's license issued to a person by the department.*

*(19) "Licensee" means a person who has received a license from the department.*

*(20) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator.*

*(21) "Lottery" or "gift enterprise" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. However, "gift enterprise" does not mean:*

*(a) lotteries authorized under part 10 of this chapter; or*

*(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos.*

*(22) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.*

*(23) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 6 of this chapter.*

*(24) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 of this chapter.*

*(25) "Person"* or "persons" *means* both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

*(26) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.*

*(27) "Public gambling" means gambling conducted in:*

*(a) a place, building, or conveyance to which the public has access or may be permitted to have access; or*

*(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization.*

*(28) "Raffle" means a gift enterprise in which each participant buys a chance or chances to win a prize.*

*(29) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin,*

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*currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.*

*(30) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."*

Section 4. **Authority of local governments to regulate gambling.** (1) A local government may not license or regulate a form of gambling authorized by parts 1 through 6 of this chapter or assess or charge any fees or taxes unless specifically authorized by statute.

(2) An incorporated city or town may enact an ordinance or resolution zoning certain areas within its incorporated limits in which gambling is prohibited.

(3) A county may enact a resolution zoning certain areas in the county, not within an incorporated city or town, in which gambling is prohibited.

(4) A county or incorporated city or town may not restrict the number of licenses that the department may issue.

Section 5. **Department as criminal justice agency.** The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through 6 of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

Section 6. **Department employees — activities prohibited.** An employee of the department, a former department employee during the first 365 days following termination of employment, or any peace officer or prosecutor directly involved with the prosecution, investigation, regulation, or licensing of gambling may not:

(1) serve as an officer or manager of a corporation or organization, other than a nonprofit corporation or organization, that conducts a gambling activity;

(2) receive or share in, directly or indirectly, any profit of a gambling activity regulated by the department;

(3) have a beneficial or pecuniary interest in a contract for the manufacture, lease, or sale of a gambling device, the conduct of a gambling activity, or the provision of independent consultant services in connection with a gambling activity.

Section 7. **Powers and duties of department — licensing.** (1) The department shall administer the provisions of parts 1 through 6 of this chapter.

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(2) The department shall adopt rules to administer and implement parts 1 through 6 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 6 of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 6 of this chapter.

Section 8. **Injunction and other remedies.** (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days; and

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) A civil penalty imposed under this section must be collected by the department and deposited in the state's general fund as required by 23-5-123. If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action.

Section 9. Section 23-5-123, MCA, is amended to read:

**"23-5-123. Disposal of money confiscated by reason of violation of gambling laws.** All *fines, penalties, forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through 6 of this chapter or a rule of the department must be deposited one-half in the state's general fund and one-half in the general fund of the county in which the violation occurred.*"

Section 10. **Qualifications for licensure.** (1) A person whom the department determines is qualified to receive a license under the provisions of this chapter, except for the provisions of part 10, may, based on information available to, required by, or supplied to the department under department rules, be issued a state gambling license.

(2) The department shall issue a license unless the department can demonstrate that the applicant is:

(a) a person whose prior activities or criminal record:

(i) poses a threat to the public interest of the state or the effective regulation and control of gambling; or

(ii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the carrying on of the business and financial arrangements incidental to gambling; or

(b) receiving a substantial amount of financing for the proposed operation from an unsuitable source. A lender or other source of money or credit that the department finds to meet the provisions of subsection (2)(a) may be considered an unsuitable source.

Section 11. **Operator of gambling establishment — license — fee.** (1) It is a misdemeanor for a person who is not licensed by the department as an operator to make available to the public for play a gambling device or gambling enterprise.

(2) An operator's license must include the following information:

(a) a description of the premises upon which the gambling will take place;

(b) the operator's name;

(c) a description of each gambling device or card game table licensed to the operator by the department for play upon the premises, including the type of game and license number or decal number for each licensed game; and

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(d) any other relevant information determined necessary by the department.

(3) The operator's license must be issued annually along with all other licenses for gambling devices or games licensed to the operator.

(4) The operator's license must be updated each time a gambling device or card game table license is newly issued or the device or game is removed from the premises.

(5) The department may not charge a fee for the issuance of an operator's license.

(6) The operator's license must be prominently displayed upon the premises for which it is issued.

Section 12. **Judicial review.** (1) (a) A person aggrieved by a final order of the department may obtain a review of the order in district court by filing with the court, within 30 days after entry of the final order, a written petition requesting that the order be modified or set aside in whole or in part.

(b) A copy of the petition must be served upon the department at the same time. When the department receives the copy of the petition, it shall certify and file in court a copy of the filing, testimony, and other evidence upon which the final order was entered by the department. When these have been filed with the court, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the final order in whole or in part. A temporary cease and desist order from the department may remain in effect until a hearing has been held and a final order has been issued pursuant to [section 8].

(2) (a) The review must be conducted by the district court without a jury and must be confined to the record. In a case of alleged irregularity in procedure before the department not shown in the record, proof may be taken by the court. The court, upon request, shall hear oral argument and receive written briefs.

(b) The court may not substitute its judgment for that of the department as to the weight of the evidence on questions of fact. The court may affirm the decision of the department or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(i) in violation of a constitutional or statutory provision;

(ii) in excess of the statutory authority of the department;

(iii) made upon unlawful procedure;

(iv) affected by other error of law;

(v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

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(vii) inadequate because findings of fact, upon issues essential to the decision, were requested but not made.

(3) The commencement of proceedings under this section, unless specifically ordered by the court, may not operate as a stay of the department's final order.

Section 13. Section 23-5-131, MCA, is amended to read:

**"23-5-131. Losses at illegal gambling may be recovered in civil action.** *A person, or his dependent or guardian, who, by playing or betting at an illegal gambling device or illegal gambling enterprise, loses money, property, or any other thing of value and pays and delivers it to another person connected with the operation or conduct of the illegal gambling device or illegal gambling enterprise, within 1 year following his loss, may:*

*(1) bring a civil action in a court of competent jurisdiction to recover the loss;*

*(2) recover the costs of the civil action and exemplary damages of no less than $500 and no more than $5,000; and*

*(3) join as a defendant any person having an interest in the illegal gambling device or illegal gambling enterprise."*

Section 14. Section 23-5-135, MCA, is amended to read:

**"23-5-135. Discharge of defendant.** *(1) A person against whom a civil action is brought as provided in 23-5-131 may move to have the action against him dismissed if he has repaid to the person who suffered the loss or his dependent the gambling loss, the costs of bringing the civil action, and the exemplary damages agreed upon by the parties or assessed by the court.*

*(2) A civil action brought to recover gambling losses does not bar or interfere with another proceeding or action, whether criminal, civil, or administrative, that may be brought under the laws of the state."*

Section 15. Section 23-5-102, MCA, is amended to read:

**"23-5-102. Gambling prohibited.** Except as *specifically authorized by statute, all forms of public gambling, lotteries, and gift enterprises are prohibited."*

Section 16. **Counterfeiting or defacing documents — penalty.** (1) A person commits the offense of counterfeiting or defacing a document when he purposely or knowingly counterfeits, alters, or wrongfully displays a seal, decal, license, identification number or device, or other document issued by the department.

(2) A person convicted of the offense of counterfeiting or defacing a document is guilty of a felony and must be punished in accordance with [section 24].

Section 17. Section 23-5-108, MCA, is amended to read:

**"23-5-108. Soliciting or persuading persons to play illegal gambling device prohibited.** *A person who advertises for or solicits another*

*person to play or engage in the use of an illegal gambling device is guilty of a misdemeanor and is punishable under [section 23].*"

Section 18. **Obtaining anything of value by fraud or operation of illegal gambling device or enterprise.** (1) A person who by gambling obtains money, property, or anything of value that does not exceed $300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a misdemeanor and is punishable as provided in [section 23].

(2) A person who by gambling obtains money, property, or anything of value that exceeds $300 in value by misrepresentation, fraud, or the use of an illegal gambling device or an illegal gambling enterprise is guilty of a felony and is punishable as provided in [section 24].

Section 19. **Gambling on cash basis.** (1) In every gambling activity, except raffles as authorized in 23-5-413, the consideration paid for the chance to play must be cash. A participant shall present the money needed to play the game as the game is being played. A check, credit card, note, I O U, or other evidence of indebtedness may not be offered or accepted as part of the price of participation in the gambling activity or as payment of a debt incurred in the gambling activity. The use of a check or credit card to pay for other goods or services in the establishment or to obtain cash is not a violation of this section.

(2) A person who violates this section is guilty of a misdemeanor and must be punished in accordance with [section 23].

Section 20. **Minors not to participate — penalty.** (1) A person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity.

(2) A person who violates this section is guilty of a misdemeanor and must be punished in accordance with [section 23].

Section 21. Section 23-5-103, MCA, is amended to read:

"**23-5-103. Possession of illegal gambling device prohibited — exception.** *(1) Except as provided in 23-5-104 and subsection (2) of this section, it is a misdemeanor punishable under [section 23] for a* person *to purposely or knowingly have* in his possession or under his control or *to purposely or knowingly permit* to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by him or under his management or control *an illegal gambling device. This section does not* apply to a public officer or to a person coming into possession *of an illegal gambling device* in or by reason of the performance of an official duty and holding *it* to be disposed of according to law.

*(2) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state and are manufactured only for export from the state.*

*(b) A person may not manufacture or possess an illegal gambling device for export from the state without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.*"

Section 22. Section 23-5-104, MCA, is amended to read:

"**23-5-104. Possession of antique slot machines.** (1) *For the purposes of this section, an antique slot machine is a slot machine manufactured prior to 1950, the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.*

*(2)* Except as provided in subsection *(3), an* antique slot *machine* may be possessed, located, and operated only in a private residential dwelling.

*(3) An antique slot machine* may be possessed or located for purposes of display only and not for operation in any public museum owned and operated by the state, a county, or a city. *A licensed manufacturer-distributor may possess and sell antique slot machines.*

*(4)* No antique slot machine may be operated for any commercial or charitable purpose."

Section 23. **Criminal liabilities — misdemeanor.** A person who purposely or knowingly violates a provision of parts 1 through 6 of this chapter, the punishment of which is for a misdemeanor, must upon conviction of a first offense be fined not more than $500. Upon a second conviction within 5 years of a first conviction, a person must be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person must be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person must be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through 6 of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order.

Section 24. **Criminal liabilities — felony.** A person who purposely or knowingly violates a provision of parts 1 through 6 of this chapter, the punishment for which is a felony, may upon conviction be fined not more than $50,000 or imprisoned for not more than 10 years, or both, for each violation.

Section 25. **Prosecution.** The county attorney of the county in which a violation of a provision of parts 1 through 6 of this chapter occurs shall prosecute all gambling actions within the jurisdiction of the department. However, if the county attorney declines prosecution or fails to commence an action within a reasonable time, the attorney general may initiate and conduct the prosecution on behalf of the state.

Section 26. Section 23-5-311, MCA, is amended to read:

"**23-5-311. Authorized card games.** *(1)* The card games authorized by this part are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pinochle, pitch, *poker,* rummy, *solo, and* whist.

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*(2) A person may conduct or participate in a live card game or make a live card game table available for public play of a live card game only if it is specifically authorized by this part and described by department rules.*

*(3) This part does not apply to games simulated on electronic video gambling machines authorized under part 6 of this chapter."*

Section 27. **Presence and control of dealer.** A live card game may not be played except on a live card game table in the presence and under the control of a licensed dealer on the premises of a licensed operator.

Section 28. **Card game dealers — license.** (1) A person may not deal cards in a live card game without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is $75, and the annual renewal fee is $25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer's license.

(4) A licensed dealer shall have on his person, and display upon request, his dealer's license when he is working as a dealer.

(5) The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer. The rules must provide that a temporary license may be obtained at the place where a person locally applies for a driver's license and that the receipt received upon mailing an application for a permanent license by certified mail, return receipt requested, also constitutes a temporary license. The department may not assess a fee for the temporary license.

Section 29. **Live card game table — permit — fees — disposition of fees.** (1) A person who has been granted an operator's license under [section 11] and a license to sell alcoholic beverages for consumption on the premises may be granted an annual permit for the placement of live card game tables. If one or more live card game tables were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed under 16-4-401(2) but were licensed on that date to sell food, cigarettes, or any other consumable product, an operator's license and an annual permit for the placement of live card game tables may be granted to the person who legally operated the premises on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) $250 for the first table; and

(b) $500 for each additional table.

(3) The department shall retain for administrative purposes $100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in

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which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

Section 30. Section 23-5-321, MCA, is amended to read:

**"23-5-321. Issuance of permits by local governing bodies prohibited.** *A* city, town, or county may *not* issue *permits* for *live card* games *or live card game tables authorized* in this part."

Section 31. Section 23-5-312, MCA, is amended to read:

**"23-5-312. Prizes not to exceed three hundred dollars.** *A prize for an individual live card game may not exceed the value of $300.* Games *may* not be combined in any manner so as to increase the value of the ultimate prize awarded."

Section 32. **Live card game tables — hours of play — restriction.** Live card game tables must be closed for play between the hours of 2 a.m. and 8 a.m. each day. However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

Section 33. Section 23-5-313, MCA, is amended to read:

**"23-5-313. Rules of play to be posted — rake-off approved.** Rules governing the conduct of each game *must* be prominently posted *within the sight of the players at a live card game table* on the premises of *a licensed operator. The* rules *must* include notice of the maximum percentage rake-off, if any, and *must* require that the person taking the rake-off do so in an obvious manner."

Section 34. Section 23-5-331, MCA, is amended to read:

**"23-5-331. Penalty.** *A* person who *purposely or knowingly* violates or who procures, aids, or abets in *a* violation of this part or any ordinance, resolution, or *rule* adopted pursuant *to this part is* guilty of a misdemeanor *punishable pursuant to [section 23]*."

Section 35. **Authorized live bingo, keno, and raffles.** (1) A person may conduct or participate in a live bingo and keno game or raffle only if it is operated pursuant to this part.

(2) This part does not apply to a game simulated on a video gambling machine authorized by part 6 of this chapter.

Section 36. **Exempt charitable organizations.** An organization qualified for exemption under 26 U.S.C. 501(c)(3) and (c)(4) on January 15, 1989, is exempt from the taxation and license fees imposed by this part. An organization qualified for exemption under that section after that date is exempt from taxation under, and need only pay one-half the license fees under, this part if the organization carries on gambling activities for no more than 60 days a calendar year and if the activities are limited to its

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main premises or place of operations and to events at other places operated by other charitable organizations or by a government unit or entity. The organization shall comply with other statutes and rules relating to the operation of live bingo and keno or raffles. A qualified organization shall apply to the department for a cost-free permit to conduct charitable live bingo and keno games or raffles. The department may revoke or suspend the permit of a qualified organization that, after investigation, the department determines is contracting with a nonqualified organization to operate live bingo, keno, or raffles in a predominantly commercial manner.

Section 37. **Live bingo or keno permit — fees — disposition of fees.** (1) A person who has been granted an operator's license may be granted an annual permit by the department to conduct live bingo or keno games on specified premises.

(2) The permit fee for each of the premises in which a live bingo or keno game is conducted may not be prorated and must be $500.

(3) The department shall retain the permit fee for administrative costs.

Section 38. **Bingo and keno tax — records — distribution — quarterly statement and payment.** (1) A licensee who has received a permit to operate bingo or keno games shall pay to the department a tax of 5% of the net income from the operation of each live bingo and keno game operated on his premises. For purposes of this section, "net income" means gross proceeds, as defined in 23-5-101, minus the cost of equipment, supplies, personnel, and advertising allocated to the games. If in any year 5% of net income does not equal 1% of gross proceeds, then the licensee shall pay a tax of 1% of gross proceeds.

(2) A licensee shall keep a record of gross proceeds and net income in the form the department requires. At all times during the business hours of the licensee the records must be available for inspection by the department.

(3) A licensee shall annually complete and deliver to the department a statement showing the total gross proceeds and net income for each live keno or bingo game operated by him and the total amount due as live bingo or keno tax for the preceding year. This statement must contain any other relevant information required by the department.

(4) The department shall forward the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed game is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from taxes on live bingo or keno games located in incorporated cities and towns within the county. The tax collected under subsection (3) is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

Section 39. Section 23-5-412, MCA, is amended to read:

**"23-5-412. Card prices and prizes.** *The price for an individual bingo or keno card may not exceed 50 cents.* Bingo prizes may be paid in either tangible personal property or cash. A prize may not exceed the value

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of $100 for each individual bingo award *or keno card.* It *is* unlawful to, in any manner, combine any awards so as to increase the ultimate value of *the* award. *A player may give the caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won."*

Section 40. Section 23-5-413, MCA, is amended to read:

**"23-5-413. Raffle prizes — permits — exception.** (1) Raffle prizes must not exceed the value of $1,000 for each individual raffle *ticket.* It *is* unlawful to, in any manner, combine any awards so as to increase the ultimate value of *the prize awarded for each ticket.*

*(2) A separate permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted. A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle. The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.*

*(3)* (a) The restrictions of subsection (1) do not apply to a raffle conducted by a nonprofit corporation, religious corporation sole, or other nonprofit organization *if* the corporation or organization is *permitted* by the board of county commissioners to conduct the raffle.

(b) The *nonprofit* organization or corporation seeking *permission* under subsection *(3)*(a) *shall* apply to the board of county commissioners for the *permit* and provide the following information:

(i) the cost and number of raffle tickets to be sold;

(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and

(iii) the proposed prizes and their value.

(c) The proceeds from the sale of the raffle tickets *may* be used only for charitable purposes or to pay for prizes. The raffle prize must be in tangible personal property only and not in money, cash, stock, bonds, evidence of indebtedness, or other intangible personal property. None of the proceeds may be used for the administrative cost of conducting the raffle."

Section 41. Section 23-5-414, MCA, is amended to read:

**"23-5-414. Restrictions on bingo and keno.** In the playing of *live* bingo or keno, *a* person who is not physically present on the premises where the game is actually conducted *may not* be allowed to participate as a player in the game."

Section 42. **Hours of play — restrictions.** A live bingo or keno game must be closed for play between the hours of 2 a.m. and 8 a.m. of each day.

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However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

Section 43. Section 23-5-431, MCA, is amended to read:

"**23-5-431. Criminal penalty.** *A* person who *purposely or knowingly* violates or who procures, aids, or abets in *a* violation of this part or any ordinance, resolution, or *rule* adopted pursuant *to this part is* guilty of a misdemeanor *punishable pursuant to [section 23]*."

Section 44. Section 23-5-602, MCA, is amended to read:

"**23-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video *gambling* machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, *and cabinetry.*

*(2) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.*

*(3) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.*

*(4)* "Keno machine" means an electronic video *gambling* machine that, upon insertion of cash, is available to play keno as *defined by rules of the department. The machine utilizes* a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that *may* be redeemed for cash. The term does not include a *slot machine or a* machine that directly dispenses coins, cash, tokens, or anything else of value.

*(5)* "Net machine income" means money put into a video *gambling* machine minus credits paid out in cash.

*(6) "Video gambling machine manufacturer-distributor" means a person who assembles, produces, makes, or supplies video gambling machines or associated equipment for sale, use, or distribution in the state.*"

Section 45. Section 23-5-603, MCA, is amended to read:

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**"23-5-603. Video gambling machines — possession — play — restriction.** (1) *A* person may *make available for public play only the number of approved video gambling machines specifically authorized by this part.*

*(2) The video gambling machines specifically authorized by this part are bingo, keno, and draw poker machines. Only the number of approved machines for which permits have been granted* under 23-5-612 *may be made available for play by the public on the premises of a licensed operator.* The department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced while it is being repaired with a video gambling machine that is approved under the permit provisions of this part. A fee may not be charged for the replacement machine.

*(3) Machines on premises licensed to sell alcoholic beverages for consumption on the premises must be placed in the room, area, or other part of the premises in which the alcoholic beverages are sold and normally consumed."*

Section 46. Section 23-5-611, MCA, is amended to read:

**"23-5-611. Machine permit qualifications — limitations.** (1) (a) A person who has been granted *an operator's* license under *[section 11] and a license* to sell alcoholic beverages for consumption on the premises may be granted *a permit* for the placement of video *gambling* machines in his *premises.*

*(b) If video keno or bingo gambling machines were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the premises or operated for the principal purpose of gaming and there is an operator's license for the premises under [section 11], a permit for the same number of video keno or bingo gambling machines as were operated on the premises on that date may be granted to the person who held the permit for such machines on those premises on that date.*

*(c) A person who legally operated an establishment on January 15, 1989, for the principal purpose of gaming and has been granted an operator's license under [section 11] may be granted a permit for the placement of bingo and keno machines in his premises.*

*(2) An applicant for a permit shall disclose on the application form to the department any information required by the department consistent with the provisions of [section 10].*

*(3)* A licensee may not have on the premises or make available for play on the premises more than *20* machines *of any combination and no more than 10 may be draw poker machines."*

Section 47. Section 23-5-612, MCA, is amended to read:

**"23-5-612. Machine permits — fee.** (1) The department, upon payment of the fee provided in subsection *(2)* and in conformance with rules adopted under *this part*, shall issue to the *operator* a *permit* for *an approved* video *gambling* machine.

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*(2)* The department shall charge an annual *permit* fee of *$200* for each video *gambling* machine *permit*. The department shall retain $100 of the total *permit* fee collected for purposes of administering this part. *The remaining $100 must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury.*

*(3)* The *permit* expires on June 30 of each year, *and the fee may not be prorated.*

*(4)* A used keno machine may be licensed under subsection (1) without meeting the requirements of 23-5-609 if the applicant for licensure can establish to the satisfaction of the department that, on the date of application, he owns or possesses a machine that was owned or operated in the state prior to June 30, 1987. A license issued under this subsection expires for all purposes no later than June 30, 1989."

Section 48. Section 23-5-631, MCA, is amended to read:

**"23-5-631. Examination and approval of new video gambling machines and associated equipment — fee.** (1) The department shall examine and *may* approve *a* new video *gambling machine* and associated equipment which *are* manufactured, sold, or distributed for use in *the* state before the video *gambling* machine or associated equipment is *sold,* played, or used.

(2) A video *gambling* machine or associated equipment may not be examined or approved by the department until the *video gambling machine* manufacturer-distributor is licensed as required in 23-5-625.

*(3) All video gambling machines approved by the department of commerce prior to [the effective date of this act] must be considered approved under this part.*

*(4)* The department shall require the manufacturer-distributor seeking the examination and approval of a new video *gambling* machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

*(5) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine prior to its distribution and placement for play by the public."*

Section 49. **Video gambling machine specifications — rules.** The department shall adopt rules describing the video gambling machines authorized by this part and stating the specifications for video gambling machines authorized by this part. The specifications in the rules must substantially follow the specifications contained in 23-5-606 and 23-5-609 as those sections read on September 30, 1989. The department shall adopt rules allowing video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities.

Section 50. Section 23-5-616, MCA, is amended to read:

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**"23-5-616. Removal of machine from public access.** If a machine fails to meet the specifications and requirements of *this part or any rule of the department which specification or requirement existed at the time the machine was approved* at any time after *its* initial *permit has been issued*, the *operator* shall immediately remove the machine from public access until it meets all requirements."

Section 51. Section 23-5-625, MCA, is amended to read:

**"23-5-625. Video gambling machine manufacturer-distributor — license — fees.** (1) It is unlawful for any person to *assemble, produce,* manufacture, *or supply* any video *gambling* machine or associated equipment for use or play in *the* state without having first been issued a *video gambling machine* manufacturer-distributor's license by the department.

(2) The department shall charge an annual license fee of $1,000 for the issuance or renewal of a *video gambling machine* manufacturer-distributor's license.

(3) In addition to other license fees, the department may charge the applicant a one-time *video gambling machine* manufacturer-distributor's license application processing fee. The processing fee may not exceed the department's actual costs for processing an application.

(4) All *video gambling machine* manufacturer-distributor's licenses expire on June 30 of each year, and the license fee may not be prorated.

(5) The department shall retain the license and processing fees collected for purposes of administering this part, *unless otherwise provided.*"

Section 52. Section 23-5-610, MCA, is amended to read:

**"23-5-610. Video gambling machine net income tax — records — distribution — quarterly statement and payment.** (1) *An operator issued a permit under this part* shall pay to the department a video *gambling* machine tax of 15% of net machine income from each video *gambling* machine licensed under this part.

(2) *An operator issued a permit under this part* shall keep a record of net machine income in such form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) *An operator issued a permit under this part* shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total net machine income from each video *gambling* machine licensed to him, together with the total amount due the state as video *gambling* machine net income tax for the preceding quarter. The statement must contain other *relevant* information as the department may require.

(4) (a) The department *shall forward* one-third of the tax collected under subsection (3) *to* the general fund.

(b) The department *shall* forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk,

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finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video *gambling* machines located in *incorporated* cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 53. Section 23-5-608, MCA, is amended to read:

**"23-5-608. Limitation on amount of money played and value of prizes — payment of credits in cash.** (1) A video *gambling* machine may not allow more than $2 to be played on a game or award free games or credits in excess of the *following amounts:*

*(a) $100 a game for a video draw poker machine; and*

*(b) $800 a game for a video keno or bingo machine.*

(2) *A* licensee shall pay in cash all credits owed to a player as shown on a valid ticket voucher."

Section 54. Section 23-5-607, MCA, is amended to read:

**"23-5-607. Expected payback — verification.** The department shall prescribe the expected payback value of one credit *awarded* to be at least 80% of the value of *one* credit *played.* Each video *gambling* machine must have an electronic accounting device that the department may use to verify the winning percentage."

Section 55. **Video gambling machines — hours of play.** A video gambling machine may not be played between the hours of 2 a.m. and 8 a.m. each day. However, in the jurisdiction of a local government where a game is played, the local government may adopt an ordinance allowing play between 2 a.m. and 8 a.m.

Section 56. Section 23-5-613, MCA, is amended to read:

**"23-5-613. Violations.** *Unless otherwise provided in this part, a person who purposely or knowingly violates or procures, aids, or abets a* violation of this part *or an ordinance, resolution, or rule adopted under this part* is *guilty of* a *misdemeanor punishable under [section 23].*"

Section 57. **Tampering with video gambling machine — penalty.** (1) A person commits the offense of tampering with a video gambling machine if he purposely or knowingly manipulates or attempts or conspires to manipulate the outcome or payoff of a video gambling machine by physical tampering or other interference with the proper functioning of the machine.

(2) A violation of this section is a felony and must be punished in accordance with [section 24].

Section 58. Section 23-5-503, MCA, is amended to read:

**"23-5-503. Rules.** (1) The card used for recording the pool and upon which the squares or spaces appear shall clearly *indicate* in advance of the

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sale of any chances the number of chances to be sold in that specific pool, the name of the event, the consideration to be paid for each chance, and the total amount to be paid to the winners.

(2) *A* chance to participate in a sports pool may *not* be sold other than upon the premises in which the sports pool is conducted. *An* individual chance to participate in a sports pool *may not* be sold for a consideration in excess of *$5*, and the total amount to be paid to the winners of any individual sports pool *may* not exceed the value of *$500*. The winner of any sports pool shall receive a 100% payout of the value of the sports pool."

Section 59. Section 23-5-509, MCA, is amended to read:

**"23-5-509. Penalty.** *A* person who *purposely or knowingly* violates or who procures, aids, or abets in *a* violation of this part *is* guilty of a misdemeanor *punishable pursuant to [section 23]*."

Section 60. Section 23-5-1101, MCA, is amended to read:

**"23-5-1101. Definition.** As used in this part, "Calcutta pool" means a form of auction pool *conducted by an organization authorized by the department. The Calcutta pool must be an auction pool in which:*

*(1) a person's wager is equal to his bid;*

*(2) the proceeds from the pool, minus administrative costs and prizes paid, are contributed to a charitable or nonprofit corporation, association, or cause;*

*(3) the rules of the pool are publicly posted;*

*(4) no more than one wager for each competitor is allowed;*

*(5) at least 50% of the total pool is paid out in prizes;*

*(6)* persons may not bid or wager money on any elementary school or high school sports event; *and*

*(7) the underlying event has more than two entrants.*"

Section 61. Section 23-5-1105, MCA, is amended to read:

**"23-5-1105. Penalty.** *A* person who violates a provision of this part is guilty of a misdemeanor *punishable pursuant to [section 23]*."

Section 62. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

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(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; *23-5-612; [section 29]; [section 38];* 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 63. **Exemption from sunrise provisions.** The provisions of Title 2, chapter 8, part 2, and 5-4-207 do not apply to [this act].

Section 64. **Gaming advisory council — allocation — composition — compensation — annual report.** (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office, except that three of the first-appointed original members shall serve a 1-year term, three (including both legislative members) shall serve a 2-year term, and three shall serve a 3-year term. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

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(5) The gaming advisory council shall appoint a chairman from its members.

(6) Legislative members of the gaming advisory council are entitled to compensation and expenses, as provided in 5-2-302, while the council is meeting. The remaining members are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit an annual report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The annual report required under subsection (8)(a) must be affixed to the annual department report on gambling in the state. The department and council shall submit the two most recent department and council reports to each of the next two regular sessions of the legislature.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change.

Section 65. **Construction.** In view of Article III, section 9, of the Montana constitution, [this act] must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by [this act].

Section 66. **Reorganization procedure.** The provisions of sections 2-15-131 through 2-15-137 govern the transfer of the various functions contained in [this act] from the department of commerce and the department of revenue to the department of justice.

Section 67. **Implementation.** (1) The governor shall by executive order implement the provisions of [this act].

(2) The governor may by executive order assign to the department of justice in a manner consistent with [this act] functions allocated to the

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department of commerce and the department of revenue by the 51st legislature relating to the implementation of Title 23, chapter 5, parts 1 through 6, that are not transferred by [this act].

Section 68. **Repealer.** Sections 23-5-105 through 23-5-107, 23-5-109, 23-5-121, 23-5-122, 23-5-124 through 23-5-127, 23-5-132 through 23-5-134, 23-5-141 through 23-5-144, 23-5-201 through 23-5-211, 23-5-301 through 23-5-303, 23-5-314 through 23-5-316, 23-5-322, 23-5-323, 23-5-332, 23-5-401 through 23-5-403, 23-5-411, 23-5-415 through 23-5-418, 23-5-421 through 23-5-423, 23-5-504 through 23-5-508, 23-5-510, 23-5-511, 23-5-601, 23-5-605, 23-5-606, 23-5-609, 23-5-615, 23-5-617, 23-5-618, 23-5-626, 23-5-627, 23-5-635, 23-5-636, 23-5-1103, 23-5-1104, MCA, are repealed.

Section 69. **Proration of certain fees.** A fee imposed under 23-5-321, 23-5-421, 23-5-612, 23-5-625, or 23-5-631 between [the effective date of this section] and October 1, 1989, must be prorated to cover only the period between the date the permit or license takes effect and October 1, 1989.

Section 70. **Appropriation.** The following appropriation is made from a state special revenue account to the department of justice for the purpose of implementing [this act] and administering chapter 5 of Title 23:

| | |
|---|---|
| Fiscal year beginning July 1, 1989 | $527,081 |
| Fiscal year beginning July 1, 1990 | $449,081 |

Section 71. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 72. **Codification instruction.** (1) [Sections 1, 2, 4 through 8, 10 through 12, 16, 18 through 20, and 23 through 25] are intended to be codified as an integral part of Title 23, chapter 5, part 1, and the provisions of Title 23, chapter 5, part 1, apply to [sections 1, 2, 4 through 8, 10 through 12, 16, 18 through 20, and 23 through 25].

(2) [Sections 27 through 29 and 32] are intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, part 3, apply to [sections 27 through 29 and 32].

(3) [Sections 35 through 38 and 42] are intended to be codified as an integral part of Title 23, chapter 5, part 4, and the provisions of Title 23, chapter 5, part 4, apply to [sections 35 through 38 and 42].

(4) [Sections 49, 55, and 57] are intended to be codified as an integral part of Title 23, chapter 5, part 6, and the provisions of Title 23, chapter 5, part 6, apply to [sections 49, 55, and 57].

(5) The code commissioner shall recodify the provisions of Title 23, chapter 5, part 11, as an integral part of Title 23, chapter 5, part 2.

(6) [Section 64] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, apply to [section 64].

Section 73. **Coordination instruction.** (1) The reference copy of House Bill No. 576 of the 51st legislature is amended to insert, on page 2,

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line 9, after "23-5-609(4)(l)", the phrase ", as that section read on September 30, 1989".

(2) The reference copy of House Bill No. 251 of the 51st legislature is amended to change "license" to "permit" on page 2, lines 2 and 13.

(3) The reference copy of House Bill No. 448 of the 51st legislature is amended to delete the amendments made to 23-5-104(1). Subsection (1) of 23-5-104 and the first sentence of 23-5-104(2) are deleted, as provided in [section 22], and the amendments to the remainder of 23-5-104 by [section 22] and House Bill No. 448 take effect.

Section 74. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 75. **Effective dates.** (1) [Subsection (2) of section 7 and sections 63 through 67, 69, 72, 73, and this section] are effective on passage and approval.

(2) [Section 70] is effective on July 1, 1989.

(3) The remaining sections are effective on October 1, 1989.

Approved May 5, 1989.

# CHAPTER NO. 643

[SB 474]

AN ACT TO DESIGNATE THE PORTION OF U.S. INTERSTATE HIGHWAY 15 BETWEEN BUTTE AND GREAT FALLS AS THE "MAUREEN AND MIKE MANSFIELD HERITAGE ROUTE".

WHEREAS, Maureen and Mike Mansfield are two of Montana's most renowned people; and

WHEREAS, Mike Mansfield has distinguished himself as one of America's leading statesmen; and

WHEREAS, recently the governments of Japan and the United States have bestowed on him their highest civilian tributes; and

WHEREAS, Mike Mansfield has retired after 70 years of public service, having served as a Marine, teacher, member of the United States House of Representatives, member of the United States Senate, and diplomat; and

WHEREAS, Maureen Mansfield was born and raised in Butte and Mike Mansfield spent the first 7 years of his life in Great Falls and later worked in the mines in Butte; and

WHEREAS, during this centennial year of statehood, it is fitting that Maureen and Mike Mansfield be honored and recognized for their many

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accomplishments by designating the 160 miles of U.S. Interstate Highway 15 between Butte and Great Falls as the "Maureen and Mike Mansfield heritage route".

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Maureen and Mike Mansfield heritage route.** The portion of U.S. interstate highway 15 between Butte and Great Falls is established as the Maureen and Mike Mansfield heritage route.

Approved May 5, 1989.

## CHAPTER NO. 644

[HB 364]

AN ACT TO REQUIRE IMMUNIZATION OF STUDENTS ATTENDING PRESCHOOLS, VOCATIONAL-TECHNICAL CENTERS, COLLEGES, AND UNIVERSITIES; TO INCLUDE MUMPS IN THOSE DISEASES THAT REQUIRE IMMUNIZATION PRIOR TO A STUDENT'S ATTENDANCE IN A SCHOOL OTHER THAN A POSTSECONDARY SCHOOL; TO ELIMINATE THE RIGHT OF A STUDENT TO BE EXEMPT FROM IMMUNIZATION ON PERSONAL GROUNDS; TO REQUIRE THAT A RELIGIOUS EXEMPTION BE REASSERTED ANNUALLY BY AFFIDAVIT, SUBJECT TO A PENALTY FOR FALSE SWEARING; TO REMOVE THE LIMIT ON THE LENGTH OF TIME THAT A STUDENT MAY BE EXCLUDED FROM SCHOOL DURING A DISEASE OUTBREAK IF THE STUDENT IS EXEMPT FROM IMMUNIZATION REQUIREMENTS; TO DELETE THE 30-DAY GRACE PERIOD FOR TRANSFER PUPILS; TO REQUIRE A SCHOOL TO RELEASE IMMUNIZATION RECORDS OF A TRANSFERRING PUPIL; AMENDING SECTIONS 20-5-402 THROUGH 20-5-405, AND 20-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-5-402, MCA, is amended to read:

**"20-5-402. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Governing authority" means the board of trustees of a school district or the administrator of a private school, *preschool, or postsecondary school*

(3) "Immunization" means induction of a state of resistance to a disease through administration of an immunizing agent.

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(4) "Local health officer" means a city, city-county, county, or district health officer.

*(5) "Local health department" means a city, city-county, county, or district health department.*

*(6) "Postsecondary school" means a vocational-technical center, a community college, a unit of the Montana university system, or a private university or college.*

*(7) "Preschool" means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:*

*(a) serves no child under 5 years of age for more than 3 hours a day; and*

*(b) serves no child 5 years of age for more than 6 hours a day.*

*(8)* "School" means *a place or* institution for the teaching of individuals, the curriculum of which is comprised of the work of:

*(a)* any combination of kindergarten through grade 12;

*(b) a postsecondary school; or*

*(c) a preschool."*

Section 2. Section 20-5-403, MCA, is amended to read:

**"20-5-403. Immunization required — release and acceptance of immunization records.** (1) The governing authority of any school *other than a postsecondary school* may not allow any person to commence attendance as a pupil unless the person:

(a) has been immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubella, *mumps,* and measles (rubeola) in the manner and with immunizing agents approved by the department, except that pertussis vaccination is not required for a person 7 years of age or older;

(b) qualifies for conditional attendance; *or*

(c) files for an exemption.

*(2) (a) The governing authority of a postsecondary school may not allow any person to commence attendance as a pupil unless the person:*

*(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or*

*(ii) files for an exemption.*

*(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by [this act].*

*(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases*

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*attendance at the school of origin, the school shall send the original immunization records for the pupil to the school district to which the pupil transfers.*"

Section 3. Section 20-5-404, MCA, is amended to read:

"**20-5-404. Conditional attendance.** The governing authority of a school *other than a postsecondary school* may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of polio, measles (rubeola), *mumps,* rubella, diphtheria, pertussis, and tetanus vaccine, except that pertussis vaccine is not required for a person 7 years of age or older."

Section 4. Section 20-5-405, MCA, is amended to read:

"**20-5-405. Medical or religious exemption.** (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, *prior to the commencement of attendance each school year, a notarized affidavit* on a form prescribed by the department stating that immunization is contrary to the religious *tenets and practices* of the signer, immunization of the person seeking to attend *the* school may not be required prior to attendance *at the* school. The statement must be maintained as part of the person's immunization records. *A person who falsely claims a religious exemption is subject to the penalty for false swearing provided in 45-7-202.*

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school, or the person seeking to attend school, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking to attend school or medical circumstances relating to him indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances which contraindicate immunization, he is exempt from the requirements of this part to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to such disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease."

Section 5. Section 20-5-408, MCA, is amended to read:

"**20-5-408. Enforcement.** (1) The governing authority of any school *other than a postsecondary school* shall prohibit from further attendance any pupil allowed to attend conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by

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the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school."

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Effective date.** [This act] is effective July 1, 1989.

Approved May 5, 1989.

# CHAPTER NO. 645

[HB 626]

AN ACT TO PROVIDE THE FACTORS THE PUBLIC SERVICE COMMISSION SHALL WEIGH AND BALANCE IN DETERMINING PUBLIC CONVENIENCE AND NECESSITY WITH RESPECT TO THE DUTY OF A RAILROAD TO FURNISH SHIPPING AND PASSENGER FACILITIES; AMENDING SECTION 69-14-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 69-14-202, MCA, is amended to read:

**"69-14-202. Duty to furnish shipping and passenger facilities.** (1) Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility. *In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and*

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*testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service."*

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved May 5, 1989.

# CHAPTER NO. 646

[HB 700]

AN ACT GRANTING AN EMPLOYMENT PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE RELATIVES IN INITIAL HIRING TO CERTAIN POSITIONS AND IN RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT; AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA; AND PROVIDING A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] requires the department of administration to adopt rules to implement [sections 1 through 5]. The legislature intends the rules to adequately provide for the administration of the point preference provided for in [section 2] and the retention preference provided for in [section 5], but to include only those rules that are reasonably necessary.

It is the desire of the legislature that the department take all necessary steps in formulating, proposing, and adopting rules to ensure that the public, particularly those persons and organizations that have shown past interest in the employment preference law, is afforded sufficient time and opportunity to participate in the rulemaking procedure. The department should give ample notice and hold necessary hearings to ensure adequate public participation.

Rules adopted by the department apply to both state and local government employers. In formulating its rules, the department should take this into consideration and adopt rules that can be used and applied by the broad spectrum of public employers.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** For the purposes of [sections 1 through 6], the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the veterans administration.

(3) "Disabled veteran" means a person:

(a) whether or not he is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the veterans administration or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who lost his life under honorable conditions while serving in the armed forces if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried.

(5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

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(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system or a vocational-technical center;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training.

Section 2. **Point preference in initial hiring for certain applicants.** (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

Section 3. **Notice and claim of preference.** (1) A public employer shall, by posting or on the application form, give notice of the point preference provided in [section 2].

(2) A job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely

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preference claim for a position is a complete defense to an action instituted by an applicant under [section 4] with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference.

Section 4. **Enforcement of preference.** (1) An applicant who believes he is entitled to but has not been given the point preference provided in [section 2] may, within 30 days of receipt of the notice of the hiring decision provided for in [section 3], submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to a point preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer applied the points under [section 2] and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to comply with the provisions of [section 2]. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of [section 2].

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

Section 5. **Retention during reduction in force.** (1) Subject to the restriction in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over

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other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

Section 6. **Adoption of rules.** The department of administration shall adopt rules implementing [sections 1 through 5]. The department's rules apply to all local and state public employers.

Section 7. Section 10-2-402, MCA, is amended to read:

**"10-2-402. Superintendent to be given veterans' preference.** In the selection of the superintendent of the Montana veterans' home, the department of institutions shall apply the preference granted to veterans and disabled veterans *under [section 2]*, but not the preference granted to other persons *under [section 2] or* Title 39, chapter 30."

Section 8. Section 39-30-101, MCA, is amended to read:

**"39-30-101. Short title.** This chapter may be cited as the "Montana Handicapped Persons' Employment Preference Act"."

Section 9. Section 39-30-102, MCA, is amended to read:

**"39-30-102. Purposes.** The purposes of this chapter are to recognize past employment discrimination against handicapped persons and facilitate the habilitation, rehabilitation, and readjustment of handicapped persons."

Section 10. Section 39-30-103, MCA, is amended to read:

**"39-30-103. Definitions.** For the purposes of this chapter, the following definitions apply:

*(1)* "Eligible spouse" means the spouse of a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

*(2)* "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and *that* limits the individual's ability to obtain, retain, or advance in employment.

*(3)* (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

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(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection *(3)*, current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection *(3)*, or current participants in a federally authorized employment program is not an initial hiring.

*(4)* (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

*(5)* "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

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(g) engagement as an independent contractor or employment by an independent contractor.

*(6)* (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

*(7)* "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

Section 11. Section 39-30-201, MCA, is amended to read:

**"39-30-201. Employment preference in initial hiring.** (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a handicapped person or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103*(3)(b)* or to any other personnel action that is not an initial hiring."

Section 12. Section 39-30-202, MCA, is amended to read:

**"39-30-202. Eligibility requirements.** *An* eligible spouse or handicapped person is *not* entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying."

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Section 13. Section 39-30-203, MCA, is amended to read:

**"39-30-203. Duration of preference.** Subject to 39-30-202, a handicapped person *or eligible* spouse qualifies for employment preference as long as the disabling condition exists."

Section 14. Section 39-30-207, MCA, is amended to read:

**"39-30-207. Enforcement of preference.** (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts *that* on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to 39-30-103*(7)*, and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court *finds* that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section."

Section 15. Section 49-2-405, MCA, is amended to read:

**"49-2-405. Veterans' and handicapped persons' employment preference.** The application of an employment preference as provided for

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in *[sections 1 through 6]*, Title 39, chapter 30, and 10-2-402 by a public employer as defined in *[section 1] and* 39-30-103 may not be construed to constitute a violation of this chapter."

Section 16. Section 49-3-103, MCA, is amended to read:

**"49-3-103. Permitted distinctions.** (1) Nothing in this chapter *prohibits* any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, *that* is not a subterfuge to evade the purposes of this chapter, except that *an* employee benefit plan *may not* excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in *[sections 1 through 6]*, Title 39, chapter 30, and 10-2-402 by a public employer as defined in *[section 1] and* 39-30-103 may not be construed to constitute a violation of this chapter."

Section 17. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 18. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. **Termination date.** [This act] terminates July 1, 1991.

Approved May 5, 1989.

# CHAPTER NO. 647

[HB 739]

AN ACT ALLOCATING A PORTION OF THE LODGING FACILITY USE TAX ATTRIBUTABLE TO STATE AGENCY IN-STATE LODGING TO THE GENERAL FUND; REQUIRING STATE AGENCIES TO ACCOUNT FOR IN-STATE LODGING EXPENDITURES; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **State agencies to account for in-state lodging expenditures.** Each state agency shall account for in-state lodging expenditures in a manner that will enable the department of revenue to determine total

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expenditures for in-state lodging by state agencies in order to make an allocation of a portion of the tax proceeds imposed by 15-65-111 to the general fund as provided in 15-65-121.

Section 2. Section 15-65-121, MCA, is amended to read:

**"15-65-121. (Effective July 1, 1989) Distribution of tax proceeds — general fund loan authority.** (1) The proceeds of the tax imposed by 15-65-111 must be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. *Before allocating the balance of the tax proceeds as provided in subsections (1)(a) through (1)(c), the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund.* The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation *or deposited in the general fund* is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, and to the university system, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program; and

(c) the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(c)(iii), 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide;

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the tourism region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those

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funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section."

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 65, part 1, and the provisions of Title 15, chapter 65 part 1, apply to [section 1].

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved May 5, 1989.

# CHAPTER NO. 648

[HB 766]

AN ACT TO CLASSIFY AS CLASS SIX PROPERTY ALL MACHINERY AND EQUIPMENT USED IN A MALTING BARLEY FACILITY; AMENDING SECTION 15-6-136, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-6-136, MCA, is amended to read:

**"15-6-136. Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit, and the unprocessed products of such animals and wildlife;

(b) all unprocessed agricultural products on the farm or in storage except:

(i) all perishable fruits and vegetables in farm storage and owned by the producer; and

(ii) all producer-held grain in storage;

(c) items of personal property intended for lease in the ordinary course of business, provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

*(d) machinery and equipment used in a malting barley facility.*

*(2) "Malting barley facility" means a facility the principal purpose of which is to malt mc'ting barley. The term does not apply to a facility the principal purpose o, which is to store, mix, blend, transport, transfer, or otherwise do anything with malting barley, except malt malting barley. However, any machinery or equipment the principal purpose of which is to store, mix, blend, transport, transfer, or otherwise handle malting barley or other machinery or equipment that is used in or is otherwise an integral part of a facility that malts malting barley is machinery or equipment of a malting barley facility for the purposes of this section.*

*(3)* Class six property is taxed at 4% of its market value."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved May 5, 1989.

# CHAPTER NO. 649

[HB 773]

THE MONTANA INITIATIVE FOR THE ABATEMENT OF MORTALITY IN INFANTS (MIAMI) ACT; ESTABLISHING A MIAMI PROJECT TO ASSURE THAT MOTHERS AND CHILDREN RECEIVE ACCESS TO QUALITY MATERNAL AND CHILD HEALTH SERVICES, TO REDUCE INFANT MORTALITY AND THE NUMBER OF LOW BIRTHWEIGHT BABIES, AND TO PREVENT THE INCIDENCE OF CHILDREN BORN WITH CHRONIC ILLNESSES, BIRTH DEFECTS, OR SEVERE DISABILITIES AS A RESULT OF INADEQUATE PRENATAL CARE; PROVIDING MEDICAID ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS WHOSE FAMILY INCOME DOES NOT EXCEED THE FEDERAL POVERTY THRESHOLD; ALLOWING AMBULATORY PRENATAL CARE FOR PREGNANT WOMEN DURING A PRESUMPTIVE ELIGIBILITY PERIOD; AMENDING SECTIONS 53-6-101 AND 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 9] may be cited as "The Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act".

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Section 2. **Purposes.** The purposes of [sections 1 through 9] are to:

(1) assure that mothers and children, in particular those with low income or with limited availability of health services, receive access to quality maternal and child health services;

(2) reduce infant mortality and the number of low birthweight babies; and

(3) prevent the incidence of children born with chronic illnesses, birth defects, or severe disabilities as a result of inadequate prenatal care.

Section 3. **Definitions.** For purposes of [sections 1 through 9], the following definitions apply:

(1) "Council" means the MIAMI project advisory council established in [section 5].

(2) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(3) "Low income" means, with respect to an individual or family, income that does not exceed the official federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(4) "Project" means the MIAMI project established in [section 4].

(5) "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project.

Section 4. **MIAMI project.** (1) There is a MIAMI project established in the department.

(2) Under the project, the department shall provide the following services:

(a) infant mortality review;

(b) low birthweight prevention;

(c) assistance to low-income women and infants in gaining access to prenatal care, delivery, and postpartum care;

(d) referral of low-income women and children to other programs to protect the health of women and children, including:

(i) supplemental food programs for women, infants, and children;

(ii) family planning services; and

(iii) other maternal and child health programs;

(e) public education and community outreach to inform the public on:

(i) the importance of receiving early prenatal care;

(ii) the need for good health habits during pregnancy; and

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(iii) the availability of special services for pregnant women and for children.

Section 5. **MIAMI project advisory council.** (1) There is a MIAMI project advisory council.

(2) The council is composed of seven members appointed by the governor as follows:

(a) one person from the department who is involved in providing preventative health services for women and children;

(b) one person from the department of social and rehabilitation services who administers or supervises services under the Montana medicaid program;

(c) one person from a local health department;

(d) one person from among local service providers;

(e) one person representing a nonprofit child health organization;

(f) one private physician who specializes in obstetric or pediatric care; and

(g) one person involved in children's issues or programs who is a representative of a parents' organization.

(3) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members.

Section 6. **Advisory council — powers and duties.** The council shall:

(1) advise the department on matters relating to administration of the MIAMI project;

(2) review and monitor activities conducted under the project;

(3) gather information relating to infant mortality and low birthweight babies;

(4) identify problems in the quality and availability of maternal and child health services; and

(5) make recommendations to improve maternal and child health services consistent with the purposes of [sections 1 through 9].

Section 7. **Contracts for services.** (1) The department shall contract with service providers to provide services under the MIAMI project.

(2) In selecting service providers, the department shall take into consideration the past performance of the person, agency, or organization in providing similar services, the demonstrated effectiveness of the service provider in delivering comparable or related services, the fiscal accountability of the service provider, and such other factors as the department determines to be appropriate.

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Section 8. **Federal and other aid.** (1) The department may apply for and receive federal aid and other funding available for the MIAMI project.

(2) Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of [sections 1 through 9].

Section 9. **Coordination of programs.** The department shall coordinate services under the MIAMI project with other services and programs in the state including:

(1) the early and periodic screening, diagnosis, and treatment services program under Title XIX of the federal Social Security Act;

(2) the Montana medicaid program established in 53-6-101; and

(3) programs administered with funds under the federal Maternal and Child Health Services Block Grant Act, Public Law 97-35, as may be amended.

Section 10. Section 53-6-101, MCA, is amended to read:

**"53-6-101. Montana medicaid program — authorization of services.** *(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.*

*(2) Medical* assistance *provided by the Montana medicaid program includes the following services*:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing home services;

(e) physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere; and

(f) services provided by nurse specialists, as specifically listed in 37-8-202(5), within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider.

*(3) Medical assistance provided by the Montana medicaid program* may, *as provided by department rule,* also include the following:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

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(c) private-duty nursing services;

(d) dental services;

(e) physical therapy and other related services;

(f) clinic services;

(g) services provided by social workers licensed under Title 37, chapter 22;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

*(k) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;*

*(l)* any additional medical service or aid allowable under or provided by the federal Social Security Act."

Section 11. Section 53-6-131, MCA, is amended to read:

**"53-6-131. Eligibility requirements.** (1) Medical assistance *under the Montana medicaid program* may be granted to a person who resides in the state of Montana, including a resident temporarily absent from the state and who meets the requirements of one or more of the following categories:

(a) he receives all or part of his income from federally funded supplemental security income assistance or aid to families with dependent children;

(b) upon application, he would be eligible for financial assistance under any one of the federally aided programs referred to above;

(c) he would be entitled to financial assistance under one of the federally aided categories except that he does not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;

(d) he is in a medical institution and if he were no longer in such institution he would be eligible for financial assistance under one of the above programs;

(e) he is under 21 years of age and meets the conditions of eligibility in the state's plan for aid to families with dependent children, other than with respect to school attendance;

(f) he is under 21 years of age and in foster care under the supervision of the state;

(g) he has income less than 133 ⅓% of the amounts specified as maximum income levels for federally aided categories of assistance;

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(h) he is under 21 years of age and medically needy, as defined by the department of social and rehabilitation services; or

(i) he is under 21 years of age, was in foster care under the supervision of the state, and has been adopted as a "hard-to-place" child.

(2) The department of social and rehabilitation services may by rule establish more restrictive property ownership eligibility criteria than required by federal law for federally aided categories of public assistance.

*(3) Notwithstanding any other provision of this chapter, medical assistance must be provided to pregnant women and infants whose family income does not exceed the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX).*"

Section 12. **Appropriation coordination — void without appropriation.** [This act] is void unless an appropriation for the administration of [this act] is specifically made to the department of health and environmental sciences in House Bill No. 100.

Section 13. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 14. **Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 50, chapter 19, and the provisions of Title 50, chapter 19, apply to [sections 1 through 9].

Section 15. **Program termination.** The provisions of [this act] terminate June 30, 1991.

Section 16. **Effective date.** [This act] is effective July 1, 1989.

Approved May 5, 1989.

# CHAPTER NO. 650

[SB 111]

AN ACT GENERALLY REVISING THE LAWS REGULATING THE PRACTICE OF VETERINARY MEDICINE; CLARIFYING DEFINITIONS AND EXEMPTIONS; PROVIDING FOR BOARD CERTIFICATION OF PERSONS WHO PRACTICE EMBRYO TRANSFER; REVISING THE REQUIREMENTS FOR CONTINUING PROFESSIONAL EDUCATION; PROHIBITING THE MUNICIPAL LICENSING OF VETERINARIANS; AMENDING SECTIONS 37-18-102, 37-18-104, 37-18-202, 37-18-307, 37-18-311, AND 37-18-502, MCA; PROVIDING FOR APPLICABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 37-18-104, 37-18-202, and 37-18-311 grant to the board of veterinary medicine the

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authority to adopt rules to implement the provisions of the bill. At a minimum, it is intended that the rules address:

(1) a definition of accepted livestock management practices in order to determine whether a person who advises on the subject is exempt from Title 37, chapter 18;

(2) development of standards for continuing education requirements, which may be supplemental to present board rules on the subject;

(3) a definition of unprofessional conduct to be used in determining whether a license may be refused, suspended, or revoked;

(4) certification of individuals seeking to practice embryo transfers, to be implemented on or before July 1, 1991; and

(5) formation of an advisory committee to make recommendations regarding the certification of individuals seeking to practice embryo transfers.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 37-18-102, MCA, is amended to read:

**"37-18-102. Veterinary medicine defined.** (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104*(4)*, for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

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(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose services are rendered gratuitously.

(3) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104."

Section 2. Section 37-18-104, MCA, is amended to read:

**"37-18-104. Exemptions.** (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees; *or*

*(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.*

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

*(3) (a) Embryo transfers may be performed, under the supervision of a licensed veterinarian, by individuals who attest to the board that they possess a combination of 3 years' education, experience, and training in that procedure.*

*(b) Exemption under subsection (3)(a) remains in effect until testing and certification procedures, as determined by board rule, are implemented on or before July 1, 1991. At a minimum, board rules must address:*

*(i) minimum education requirements;*

*(ii) minimum requirements of practical experience;*

*(iii) continuing education requirements;*

*(iv) limitations on practices and procedures that may be performed by certified individuals;*

*(v) the use of specific drugs necessary for safe and proper practice of certified procedures;*

*(vi) content and administration of the certification test, including written and practical testing;*

*(vii) application and reexamination procedures;*

*(viii) conduct of certified individuals, including rules for suspension, revocation, and denial of certification; and*

*(ix) establishment of an advisory committee. The committee:*

*(A) must consist of:*

*(I) one member of the board who is a veterinarian;*

*(II) one member of the Montana state university reproductive physiology department;*

*(III) one member representing the Montana stockgrowers association animal health committee;*

*(IV) one member representing the Montana woolgrowers association;*

*(V) one reproductive specialist with practical experience in embryo transfers; and*

*(VI) a veterinarian who is a member of the American college of theriogenologists;*

*(B) shall make recommendations regarding the testing and certification procedures. The committee may not adopt rules.*

*(C) in cooperation with the board, shall conduct a study of the practice of bovine pregnancy testing and ovine pregnancy testing with the use of ultrasound equipment. The study must include but is not limited to:*

*(I) federal laws governing the practice of pregnancy testing;*

*(II) education and experience requirements for the practice of pregnancy testing; and*

*(III) pregnancy testing by nonveterinarians;*

*(D) terminates July 1, 1991.*

*(4)* This chapter does not prohibit a person from *caring for and* treating his own farm animals or being assisted in this treatment by his *full-time* employees, *as defined in 2-18-601,* employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

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*(5)* This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business."

Section 3. Section 37-18-202, MCA, is amended to read:

**"37-18-202. Powers of board and department — examinations — prosecutions.** (1) The board may adopt rules and orders necessary for the performance of its duties, *including but not limited to:*

*(a) development of continuing professional education requirements and exceptions therefrom;*

*(b) prescribing of* forms for application for examination and license; and

*(c) preparation of* examinations.

*(2)* The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

*(3)* The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court."

Section 4. Section 37-18-307, MCA, is amended to read:

**"37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel.** (1) A person licensed to practice veterinary medicine in this state shall procure from the department before November 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee fixed by the board and *on* presentation of evidence satisfactory to the board that the licensee *has complied with continuing education requirements established* by the board. *The* board may *waive, relax, or suspend continuing education requirements or particular program requirements for applicants who cannot fulfill those requirements because of individual hardship. New* licensees who secure licenses by examination shall be granted a renewal the first year without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

(2) Failure of a person licensed to procure a certificate of registration before November 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled *all* continuing educational requirements *to the date of application for restoration.* The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

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(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before November 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department."

Section 5. Section 37-18-311, MCA, is amended to read:

**"37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing.** (1) The board may, with respect to the practice of veterinary medicine, either refuse to grant a license or a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) fraud or deception in procuring the license;

(b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, subject to chapter 1, part 2, of this title;

(d) habitual intemperance in the use of intoxicating liquors or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs or, subject to chapter 1, part 2, of this title, conviction of a violation of a federal or state law relating to narcotic drugs;

(e) unprofessional conduct, *as defined by rule of the board,* manifestly disqualifying the licensee from practicing veterinary medicine;

(f) malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) failure to keep one's premises in a clean and sanitary condition;

(j) violation of this part or of the rules or orders of the board;

(k) revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may not refuse to issue a license or certificate of registration or suspend or revoke a license and certificate of registration for any

cause unless the person accused has been given notice and a public hearing by the board."

Section 6. Section 37-18-502, MCA, is amended to read:

**"37-18-502. Injunction.** The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104*(4)*. If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18."

Section 7. **Municipal license fee prohibited.** No license fee or license tax may be imposed upon a person who practices veterinary medicine, as a condition to the practice of his profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers.

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Applicability.** The provisions of [this act] clarify existing authority of the board of veterinary medicine to regulate veterinary practices. The provisions of Title 2, chapter 8, part 2, and 5-4-207 do not apply to [this act].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved May 11, 1989.

# CHAPTER NO. 651

[SB 303]

AN ACT REQUIRING LICENSURE OF ESCROW BUSINESSES BY THE DEPARTMENT OF COMMERCE; REGULATING ESCROW BUSINESSES; PROVIDING FOR FEES AND PENALTIES.

## STATEMENT OF INTENT

A statement of intent is required for this bill because it grants rule-making authority to the director of the department of commerce to adopt rules to license and regulate escrow businesses.

The legislature intends that the rules adopted be designed to protect property buyers in this state by requiring those businesses that offer escrow services to become licensed and subject to state regulation and to prohibit certain unsound practices regarding the transaction of escrow services.

The legislature further intends that the director:

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(1) make reasonable rules that do not extend, modify, or conflict with any law of this state or with any reasonable implication of those laws; and

(2) make or amend those rules.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Title and purpose.** (1) [This act] shall be known and may be cited as the "Regulation of Escrow Businesses Act".

(2) It is the intent of the legislature that the escrow industry be supervised and regulated by the financial division of the department of commerce in order to protect the citizens of the state and to provide that the business practices of the escrow industry are fair and orderly among the members of the escrow industry, with due regard to the ultimate consumers in this important area of property protection.

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise the following definitions apply:

(1) "Department" means the department of commerce as provided for in Title 2, chapter 15, part 18.

(2) "Director" means the director of the department of commerce.

(3) "Escrow" means any transaction in which one person, for the purpose of effecting the sale, transfer, encumbrance, or lease of real or personal property to another person or for the purpose of making payments under any encumbrance of the property, delivers any written instrument, money, evidence, title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when the instrument, money, evidence, title, or thing of value is to be delivered by the third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, or bailor or to any of his agents or employees pursuant to the written escrow instructions.

(4) "Escrow business" means a commercial activity characterized by the regular and continuous carrying on of escrow transactions.

(5) "Licensee" means a person holding a valid license under [this act] as an escrow business.

(6) "Person" means an individual, cooperative, association, company, firm, partnership, corporation, or other legal entity.

Section 3. **Exemptions.** (1) The provisions of [this act] do not apply to the following:

(a) a person licensed by this state pursuant to Title 37, chapter 61, as an attorney at law who is not actively engaged in the escrow business;

(b) a person licensed by this state pursuant to Title 37, chapter 50, as a public accountant who is not actively engaged in the escrow business;

(c) a person whose principal business is that of preparing abstracts or making searches of title that are used as a basis for the issuance of any

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title insurance policy by a company doing business under the laws of this state relating to insurance companies and the person is regulated by the commissioner of insurance;

(d) a financial institution, as defined in 32-6-103, that has its escrow accounts regularly audited or examined. The financial institution must supply a copy of the most recently prepared audit or examination to the director upon his request.

(e) except as provided in subsection (2), any broker licensed by the Montana board of realty regulation if he is performing an act:

(i) in the course of or incidental to a single real estate transaction; and

(ii) for which a real estate license is required; and

(f) any person furnishing escrow services under the order of a court.

(2) A trust account of a broker licensed by the Montana board of realty regulation is not an escrow account within the meaning of [this act].

Section 4. **Exemption or exception — burden of proof.** In any proceeding under [this act], the burden of proving an exemption or exception from a definition is upon the person claiming it.

Section 5. **Director — powers and duties.** (1) The director shall exercise general supervision and control over persons doing escrow business in this state.

(2) In addition to the other duties imposed upon him by law, the director shall:

(a) adopt reasonable rules necessary to effectuate the purposes of [this act];

(b) conduct examinations and investigations that may be necessary to determine whether a person has engaged or is about to engage in any act or practice constituting a violation of any provisions of [this act];

(c) conduct examinations, investigations, and hearings necessary and proper for the efficient administration of [this act]; and

(d) establish fees commensurate with the costs of issuing the license and examining an escrow business.

Section 6. **Application for license — issuance.** (1) A person must be licensed pursuant to [this act] before engaging in an escrow business.

(2) To obtain a license, an applicant shall file with the director an application for an escrow business license. The application must be in writing, verified by oath, and in the form prescribed by the director. The application must set forth:

(a) the location of the applicant's principal office and all branch offices in this state;

(b) the name and form under which the applicant plans to conduct business;

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(c) the general plan and character of the business;

(d) the names, residences, and business addresses of any principals, partners, officers, trustees, and directors, specifying as to each his capacity and title;

(e) the experience and qualifications of the persons proposed to act as officers and managers;

(f) the length of time the applicant has been engaged in the escrow business; and

(g) any other relevant information the director requires.

(3) The director shall grant and issue an escrow business license if:

(a) the director has received and filed the application specified in [this section]; and

(b) the applicant has complied with all the requirements of [this act] and any rules promulgated under it.

(4) An escrow business shall immediately notify the department of any material change in the information contained in the application.

Section 7. **Transferability.** An escrow business license is not transferable or assignable. The provisions of this section apply to the change of ownership of any escrow business, including the change of control over any corporation licensed as an escrow business. For purposes of this section, "change of control" means the transfer of 25% or more of the outstanding voting stock of the corporation.

Section 8. **Maintenance of records.** (1) A licensee shall establish and maintain the books, accounts, and records necessary to enable the director at any time to determine whether the escrow transactions performed by the licensee comply with the provisions of [this act]. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles and good business practice.

(2) A licensee shall establish and maintain the following records concerning general accounts:

(a) a general record reflecting the assets, liabilities, capital, income, and expense of the business, maintained in accordance with generally accepted accounting principles;

(b) a cash receipt and disbursement journal; and

(c) a reconciliation of monthly statements to the general record.

(3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with the bank statements reflecting each escrow account.

(4) A licensee shall preserve for at least 3 years after the close of any escrow:

(a) all bank statements reflecting each escrow account and records of monthly reconciliations of the statements to the general record;

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(b) all canceled checks drawn on each escrow account;

(c) any additional records reflecting banking transactions regarding each escrow account, including copies of all receipts for funds transferred from other accounts into each escrow account;

(d) all statements of account;

(e) all escrow instructions and amendments to them; and

(f) all additional records pertinent to each escrow transaction.

(5) A licensee shall perform one of the following:

(a) file annually with the director, on or before April 30, a statement of its financial condition, transactions, and affairs as of the preceding December 31. The director may grant an extension, not to exceed 10 days, on or before the April 30 filing date if the licensee demonstrates good cause for an extension. The financial statement must be certified by an independent public accountant and must be in a form and contain the information prescribed by the director.

(b) request that the director examine the financial condition, transactions, and affairs of the licensee pursuant to procedures prescribed by the director.

Section 9. **Statement of account.** A licensee shall provide a full statement of an escrow account established under an escrow agreement within 14 days of a written request made by a party to the escrow agreement. The statement must state:

(1) credits to principal;

(2) interest earned for the period; and

(3) other information requested.

Section 10. **Deposit of funds required — disbursement.** (1) All money deposited in an escrow to be delivered upon the close of the escrow or upon any other contingency must be deposited with a financial institution, as defined in 32-6-103, doing business in this state and must be kept separate, distinct, and apart from funds belonging to the escrow business. The funds, when deposited, must be designated as "escrow accounts" or given some other appropriate designation indicating that the funds are not the funds of the escrow business.

(2) A person may not knowingly keep or cause to be kept any funds or money with a financial institution, as defined in 32-6-103, under the heading of "escrow accounts" or any other name designating the funds or money as belonging to the clients of any escrow business, except actual escrow funds deposited with the escrow business.

(3) Escrow funds are not subject to execution or attachment on any claim against the escrow business.

(4) Any interest received on funds deposited with an escrow business in connection with any escrow that is deposited in an authorized depository must be paid over to the depositing party to the escrow account and may

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not be transferred to an account of the escrow business. This section does not limit or restrain the right of the depositing party to contract with respect to the interest received on the deposits by an independent agreement.

(5) An escrow business may not disburse funds from any escrow account until cash, items, or drafts in an amount sufficient to fund any disbursements from the account have been received and deposited in the account and are available for withdrawal from the account as a matter of right. For the purposes of this subsection:

(a) "Available for withdrawal from the account as a matter of right" means that the bank or savings and loan association in which an item has been deposited considers the item available for withdrawal as a matter of right and that a final settlement will occur in writing with respect to that item.

(b) "Item" means any check, including a cashier's check, negotiable order of withdrawal, share draft, traveler's check, or money order.

Section 11. **Fees.** (1) (a) An applicant for licensure shall pay a license fee set by the director, commensurate with the costs of licensing the applicant.

(b) A licensee may be charged an examination fee based on the actual costs of the examination.

(2) All fees collected by the department for the licensure and examination of escrow businesses must be paid to the state treasurer to the credit of the state special revenue fund for use by the department in its licensure and examination functions under [this act].

Section 12. **Unauthorized business practices — penalty.** (1) Unauthorized business practices of escrow businesses include but are not limited to the following:

(a) issuing, circulating, making use of, or publishing, by any means of communication, an advertisement indicating that a person is in the escrow business if that person is not a licensed escrow business;

(b) soliciting or accepting an escrow instruction or amended or supplemental escrow instruction containing any blank to be filled in after the signing or initialing of the escrow instruction or permitting any person to make any addition to, deletion from, or alteration of an escrow instruction or amended or supplemental escrow instruction unless the addition, deletion, or alteration is signed or initialed by the affected party who signed or initialed the escrow instruction or amended or supplemental escrow instruction prior to the addition, deletion, or alteration;

(c) failing to carry out the escrow transactions pursuant to the written escrow instructions unless amended by the written agreement of all parties to the escrow agreement or their assigns;

(d) accepting any escrow transaction that requires or has required the prepayment, deduction, or withholding of any sum to cover payments on the indebtedness or any prior encumbrance if the payments are not due

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and payable to the mortgagee or obligee at the time the escrow is established. However, payments may be made on property taxes for the current year or for the next annual premium on hazard insurance.

(e) refusing to allow parties to an escrow transaction or designated agents of those parties access to the records of the escrow transaction; and

(f) failing to promptly distribute funds pursuant to escrow instructions.

(2) Any licensee who engages in an unauthorized business practice is subject to the revocation or suspension of the licensee's license.

Section 13. **Investigations by director — desist order — injunctions or other actions.** (1) The director may investigate, upon complaint or otherwise, if it appears that:

(a) an escrow business is conducting its business in an unsafe and injurious manner or in violation of [this act] or any rule promulgated pursuant to [this act]; or

(b) a person is engaging in the escrow business without being licensed under the provisions of [this act].

(2) (a) If it appears to the director, upon sufficient grounds or evidence satisfactory to the director, that an escrow business has engaged or is about to engage in any act or practice in violation of [this act] or any rule or order issued pursuant to [this act] or that the assets or capital of any escrow business or company are impaired or the licensee's affairs are in an unsafe condition, the director may summarily order the escrow business to cease and desist from the act or practice or the director may apply to the district court of the first judicial district of Lewis and Clark County to enjoin the act or practice and to enforce compliance with [this act] or for any other appropriate equitable relief.

(b) Upon a proper showing, the court may:

(i) grant a temporary restraining order, followed by a preliminary injunction and a permanent injunction;

(ii) appoint a receiver for the defendant or defendant's assets;

(iii) cancel the licensee's license; and

(iv) order other equitable remedies the court considers necessary and appropriate.

(3) The court may not require the director to post a bond.

Section 14. **Subpoenas — oaths — examinations of witness and evidence.** (1) In the conduct of any examination, investigation, or hearing, the director may:

(a) compel the attendance of any person or obtain any documents by subpoena;

(b) administer oaths;

(c) examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of [this act]; and

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(d) require the production of any books, records, or papers relevant to the inquiry.

(2) If a person refuses to obey a subpoena issued to the director, the district court of the first judicial district of Lewis and Clark County or other district court having proper venue, upon application by the director, may order the person to produce documentary evidence or to give evidence relating to the matter under investigation or in question. If a person fails to obey the order of the court, the person may be punished by the court as contempt of court.

Section 15. **Hearings and appeals.** The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a contested case brought under [this act].

Section 16. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 17. **Codification instruction.** [Sections 1 through 15] are intended to be codified as an integral part of Title 32 and the provisions of Title 32 apply to [sections 1 through 15].

Section 18. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 11, 1989.

# CHAPTER NO. 652

[SB 377]

AN ACT REVISING AND CLARIFYING THOSE ITEMS SUBJECT TO FORFEITURE BECAUSE OF THEIR CONNECTION TO DANGEROUS DRUG OFFENSES; REDUCING THE MARIJUANA LIMITATION; AND AMENDING SECTIONS 44-12-102 AND 44-12-203, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-12-102, MCA, is amended to read:

**"44-12-102. Things subject to forfeiture.** (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled

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substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than *60* grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, *that* are used or intended for use in any manner *to facilitate* the *commission of a violation of Title 45, chapter 9*;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from *a* violation of Title 45, chapter 9, *that is punishable by more than 5 years in prison; and*

*(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with his actual knowledge or express consent.*

(2) (a) *A* conveyance used by a person as a common carrier in the transaction of business as a common carrier is *not* subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) *A* conveyance is *not* subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than *60* grams of marijuana."

Section 2. Section 44-12-203, MCA, is amended to read:

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**"44-12-203. Presumption — procedure following answer or expiration of time for answering.** (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102, *except property listed in 44-12-102(1)(i).*

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion must order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 60 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of the petition and summons."

Approved May 11, 1989.

# CHAPTER NO. 653

[SB 473]

AN ACT AUTHORIZING THE ATTORNEY GENERAL TO ISSUE CONFIDENTIAL LICENSE PLATES AND CERTIFICATES OF REGISTRATION FOR PURPOSES OTHER THAN LAW ENFORCEMENT; AMENDING SECTIONS 44-4-201 AND 44-4-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-4-201, MCA, is amended to read:

**"44-4-201. Authorization to issue confidential plates and registrations.** *(1)* The attorney general *may* issue *confidential license plates and certificates of registration* to bona fide law enforcement agencies, except the highway patrol, within the state of Montana.

*(2) The attorney general may issue confidential license plates and certificates of registration for purposes other than law enforcement.*

*(3) Confidential* license plates and certificates of registration *are* exempt from all requirements for public disclosure.

*(4)* The issuance of confidential registrations *is* subject to the provisions of this part."

Section 2. Section 44-4-205, MCA, is amended to read:

**"44-4-205. Use of confidential plates and registrations.** (1) Such license plates and registrations may be displayed and used only during and in the furtherance of official law enforcement investigations *or for purposes as authorized in 44-4-201(2).*

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(2) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 11, 1989.

# CHAPTER NO. 654

[HB 245]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ISSUE NEW NUMBER PLATES FOR MOTOR VEHICLES BEGINNING JANUARY 1, 1991; PROVIDING A FEE FOR ISSUANCE OF NEW NUMBER PLATES; EXTENDING UNTIL JULY 1, 1996, THE VALIDITY OF COMMEMORATIVE CENTENNIAL LICENSE PLATES; AMENDING SECTIONS 2-89-302, 61-3-321, AND 61-3-332, MCA, AND SECTION 5, CHAPTER 674, LAWS OF 1985; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-332, MCA, is amended to read:

**"61-3-332. Number plates.** (1) Every motor vehicle *that is* driven upon the streets or highways of *Montana must* display both front and rear number *plates*, bearing the distinctive number assigned *the* vehicle. *The* number *plates are* in eight series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type *that* bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) *that* bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) *that* bear the distinctive letters "UD" or the letter "U" and the word "DEALER", and one for dealers in trailers and/or semitrailers (new or used) *that* bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER". All markings for the aforementioned kinds of dealers' plates *must* be placed on the number plates assigned thereto in *the* position *that* the department *designates*.

(2) All number plates for motor vehicles *must* be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers *that must* be affixed to the license plates in use.

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*(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.*

*(4)* In the case of motorcars and trucks, plates *must* be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana *must* be used as a distinctive border on such license plates, and the word "Montana" *and* the year *must* be placed across the plates. Such registration plates *must* be treated with a reflectorized background material according to specifications prescribed by the department.

*(5)* The distinctive registration numbers *must* begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle *must* appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. *The* county number *must* be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters *must* be determined by the department, *and* all county and registration numbers *must* be of equal height.

*(6)* For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates *must* have thereon the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. *All* numbered plates issued to state departments *must* bear the words "State Owned", and no year number *may* be indicated thereon *because* these numbered plates *are* of a permanent nature and will be replaced by the department *only* when the physical condition of numbered plates requires *it*.

(b) For vehicles *that are* owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and *that are* used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there *must* be placed on the number plates assigned thereto, in *a* position *that* the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of *the* counties and those of the irrigation districts *that* obtain plates within each county *must* begin with number one and be numbered consecutively.

*(7)* On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there *must* appear the letter "T" or the word "TRUCK" *on* plates assigned to trucks and the letters "TR" or the word "TRAILER" *on* plates assigned to

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trailers and housetrailers. The letters "MC" or the word "CYCLE" *must* appear *on* plates assigned to vehicles of the motorcycle or quadricycle type.

*(8)* Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. No registration or license fee may be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

*(9)* For the purpose of this chapter, the several counties of the state *are* assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties *must* be assigned numbers by the department as they may be formed, beginning with the number 57."

Section 2. Section 61-3-321, MCA, is amended to read:

**"61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees *must* be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses *are* classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or

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bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates *are* 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle except passenger cars used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year *is* one-half of the regular fee.

(5) An additional fee of $3 per year for each registration of a vehicle *must* be collected as a registration fee. Revenue from this fee *must* be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the state special revenue fund.

*(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).*

*(7)* The provisions of this part with respect to the payment of registration fees *do* not apply to *and are not* binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

*(8)* The provisions of this section relating to the payment of registration fees *or new number plate fees* do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335."

Section 3. Section 2-89-302, MCA, is amended to read:

**"2-89-302. (Temporary) Commemorative centennial license plates.** (1) Notwithstanding the 4-year period provided for in 61-3-332(2), the department of justice may issue commemorative centennial license plates for a different period if requested by the Montana statehood centennial office, at prices to be agreed upon by the department and the office as provided in 2-89-303.

(2) Commemorative license plates may be:

(a) collectors' license plates, intended to be collectors' items only, distinctively marked or colored. Such plates may be designated as not valid for the purpose of licensing motor vehicles within the state; or

(b) special or limited duration license plates valid for licensing motor vehicles in the state and carrying the same general centennial design as regularly issued license plates provided for in 2-89-301, except that they may differ from such regular license plates by:

(i) color;

(ii) use of a distinctive series of registration numbers or special prefixes or suffixes for the registration numbers; and

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(iii) by other details not distracting from legibility or recognition of the license plate.

(3) (a) The proceeds from the sale of commemorative license plates, after payment of the agreed price to the department, must be used for centennial activities of the office as provided in part 1 of this chapter.

(b) A county shall assess an additional fee of $3 for each set of commemorative centennial license plates issued in the county to defray the costs incurred by the county treasurer. The county treasurer shall collect the fee and deposit the money in the county general fund.

(c) The issuance of commemorative license plates must be made at no direct cost to the state.

(4) Commemorative license plates that are valid for licensing a motor vehicle must carry the assigned county number, as established in 61-3-332, either within the registration numbers or by means of an affixed nonremovable sticker bearing the appropriate county designation and used in accordance with instructions by the department. **(Terminates July 1, 1991—sec. 5, Ch. 674, L. 1985.)**"

Section 4. Section 5, Chapter 674, Laws of 1985, is amended to read:

"Section 5. **Termination date.** This act terminates July 1, *1996*."

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Appropriation.** (1) The following appropriation is made to the department of institutions for the purpose of implementing [this act]:

| | FY 1990 | FY 1991 |
|---|---|---|
| Expenditures: | | |
| Personal Services | $ 11,557 | $ 5,777 |
| Operating Expenses | 1,799,883 | 325,289 |
| Total | $1,811,440 | $331,066 |

(2) The following appropriation is made to the department of justice for the purpose of implementing [this act]: $71,400

| | | |
|---|---|---|
| Funding: | | |
| General Fund | $1,811,440 | $ 0 |
| Motor Vehicle Account | 0 | 402,466 |
| Total | $1,811,440 | $402,466 |

(3) Any unexpended funds at the end of fiscal year 1990 are reappropriated for fiscal year 1991.

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Section 7. **Effective date.** [This act] is effective on passage and approval.

Section 8. **Applicability.** [This act] applies to registration of motor vehicles and display of license plates issued after December 31, 1990.

Approved May 11, 1989.

# CHAPTER NO. 655

[HB 325]

AN ACT CLARIFYING AND EXPANDING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION REGARDING ALLOCATION OF SPACE FOR CERTAIN STATE AGENCIES; AND AMENDING SECTION 2-17-101, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-17-101, MCA, is amended to read:

**"2-17-101. Allocation of space.** (1) The department of administration shall *determine* the *space required by* state agencies other than the university system and shall *allocate* space in buildings *owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department periodically shall identify the amount, location, and nature of space used by each agency.*

*(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state to meet the agency's requirements. If no space is available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate building or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A* state agency *may not* lease, rent, or purchase property for quarters without prior approval of the department.

*(3)* (a) The location of the chambers for the house of representatives shall be determined in the sole discretion of the house of representatives. The location of the chambers of the senate shall be determined in the sole discretion of the senate.

(b) The department of administration, with the advice of the capitol building and planning committee, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

*(4)* For state agencies located in a city other than Helena, the department of administration shall consolidate the offices of these agencies in a single, central location within the city whenever such consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire,

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by exchange or otherwise, land and buildings in the city to achieve consolidation. State retail liquor stores, liquor retail agencies, *and offices of the law enforcement services division and motor vehicle division of the department of justice* are exempted from consolidation."

Section 2. **Allocation of legislative rooms and offices.** Notwithstanding the provisions of [section 1], the house of representatives and the senate shall continue to occupy and control the rooms and offices in the capitol building that they occupied and controlled during the 50th and 51st legislatures.

Approved May 11, 1989.

# CHAPTER NO. 656

[HB 507]

AN ACT REVISING THE LAWS GOVERNING ADMINISTRATION OF THE CULTURAL AND AESTHETIC PROJECTS GRANTS PROGRAM; ESTABLISHING PRIORITIES FOR GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC GRANTS; AMENDING SECTIONS 22-2-306 AND 22-2-309, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 22-2-306, MCA, is amended to read:

**"22-2-306. Grant conditions — additional funds — accounts and reports.** (1) *A* grant may *not* be awarded unless the grantee accepts the Montana arts council's conditions of the grant and signs a contract stipulating those conditions.

(2) A grantee must agree in writing that:

(a) the grantee is the official and sole agency for the administration of the project described in the grant agreement; and

(b) no person will, on the grounds of race, color, national origin, sex, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that results from the expenditure of grant funds.

(3) The grantee must agree that the funds granted will be expended solely for the purpose and activities described in the approved proposal. All funds granted to the grantee must be spent or encumbered during the grant period.

(4) Disbursements to grantees must be as follows, based upon the cash flow needs of the projects and the revenues available:

(a) Projects that are to receive more than $10,000 may receive an amount not exceeding 25% of the grant award in the first 6 months of the biennium, 50% in the first year of the biennium, 75% in the first 18

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months of the biennium, and the balance in the remainder of the biennium. Within *the* limitations *contained in this subsection*, the amount of each payment must be determined by the Montana arts council in its discretion. Each payment may be made only after an examination of the costs incurred in the project and the amount, if any, of the unencumbered or unexpended balance of prior grant payments for the project.

(b) Projects that are to receive $10,000 or less may receive the total grant in any fiscal quarter if the Montana arts council determines that the cultural and aesthetic project account has funds available and that, after an examination of the costs incurred by the project, total payment is appropriate.

(c) A grant award budget may be modified in accordance with this subsection. A grantee may modify line items in an approved budget in an amount not to exceed 10% of the total grant award. A grantee may, with permission of the Montana arts council, modify line items in an approved budget in an amount not to exceed 20% of the total grant award. *A* modification may *not* increase the grant award or change the scope or purpose of the award.

(5) The grantee must maintain accounts, records, and other pertinent material pertaining to the costs incurred and expenditures made under the grant. The system of accounting employed by the grantee must be in accordance with generally accepted accounting principles and be applied in a consistent manner so that project costs and expenditures can be clearly identified. Accounts, records, and other pertinent material must be maintained for 3 years from the official termination date of the grant period or until an audit, approved by the council, has been completed and any questions arising from the audit have been resolved to the satisfaction of the council.

(6) Grantees must submit to the council semiannual reports of expenditures during the course of the project and other financial and descriptive reports *that* the council may require. The grantee must submit, within 30 days after completion of the project, a final financial report and a narrative report stating what was accomplished with the grant. Five percent of the total grant award must be held pending receipt of final reports by the council. *With regard to grantees who in the past have submitted late reports, 30% of the grant award may be held pending receipt of final reports by the council.*

(7) The council may, at the principal place of business of the grantee and during regular business hours, examine any directly pertinent records, accounts, and documents of the grantee involving transactions related to the grant."

Section 2. Section 22-2-309, MCA, is amended to read:

**"22-2-309. Grant categories.** (1) The following categories are established for grant funds:

(a) special projects which are specific cultural and aesthetic activities, services, or events of limited duration;

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(b) operational support for cultural institutions that have been in existence for at least 2 years and whose budgets reflect only the cost of continuing their current program;

(c) capital expenditures for acquisition, construction, or renovation of facilities; and

(d) challenge grants for permanent endowments to benefit cultural nonprofit grant recipients.

(2) The Montana arts council may require a match in cash or donated services for special project and operational support grants. There is a presumption that the match must represent $1 in value for each dollar of the grant. The Montana arts council may accept matches in excess of the presumed value or may in its discretion require a lesser amount.

(3) Capital expenditures may not exceed 25% of the total grant funds appropriated. Capital expenditure grants require a match of at least $3 in cash or donated goods and services, which goods and services must be donated specifically for the capital expenditure project, to receive each dollar of grant funds.

(4) Challenge grants require a match of at least $3 in cash or irrevocable planned or deferred gifts to receive each dollar of grant funds. Challenge grants are available upon meeting the specified match. Not less than one-third of the specified match must be in cash. Not more than one-third of the match may be in wills, devises, bequests, *and paid-up life insurance policies. A devise may include retention of an irrevocable life estate by the donor.*"

Section 3. **Appropriation of cultural and aesthetic grant funds — priority of disbursement.** (1) The Montana arts council shall disburse money appropriated by [this act] with priority given to subsection (2), followed by subsections (3) and (4), respectively. The Montana arts council shall include in the award contract under this section a statement binding the grant to any contingencies established in the recommendations of the cultural and aesthetic projects advisory committee submitted to the legislature under 22-2-302 or any other contingencies as modified by the long-range planning subcommittee and as reflected in the official minutes of the subcommittee.

(2) If the funds in the cultural and aesthetic projects account were insufficient in the biennium ending June 30, 1989, to fund projects in the amount for which they were appropriated, the funds for the projects are reappropriated from the account until funds have been disbursed to fully cover appropriations or until October 1, 1990, whichever comes first.

(3) The following projects are approved and amounts appropriated to the Montana arts council for the biennium ending June 30, 1991, from the cultural and aesthetic projects account:

| Project | Amount |
|---|---|
| Shakespeare in the Parks | $ 15,000 |
| Billings Symphony Society | 15,000 |

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| | |
|---|---|
| Helena Film Society | 50,000 |
| Oral History Office | 70,000 |
| Yellowstone Art Center | 50,000 |
| Parmly Billings Library Foundation | 25,000 |
| Paris Gibson Square | 30,000 |
| Missoula Children's Theatre | 20,000 |
| U of M School of Fine Arts | 40,000 |
| MT Community Foundation | 50,000 |
| Custer County Art Center | 12,000 |
| Young Audiences of Western MT | 15,000 |
| Alberta Bair Theatre | 30,000 |
| Montana Performing Arts Cnsrt | 25,000 |
| Great Falls Symphony Assn. | 9,500 |
| Western Heritage Center | 15,000 |
| Vigilante Players, Inc. | 13,000 |
| Hockaday Center for the Arts | 15,000 |
| Helena Film Society | 10,000 |
| Montana Inst. of the Arts Fndn | 15,000 |
| Shakespeare in the Parks | 30,000 |
| Missoula Children's Theatre | 15,000 |
| Montana Art Gallery Dir. Assoc. | 25,000 |
| Hockaday Center for the Arts | 25,000 |
| Paris Gibson Square | 10,000 |
| Helena Arts Council | 30,000 |
| Yellowstone Chamber Players | 8,000 |
| Garnet Preservation Assoc. | 10,000 |
| KUSM Public Television | 20,000 |
| Hellgate Writers, Inc. | 13,700 |
| Fort Peck Fine Arts Council | 20,000 |
| Montanans for Quality TV | 15,000 |
| Museum of the Rockies | 25,000 |
| Billings Preservation Society | 10,000 |
| Aleph Movement Theatre | 8,000 |
| Watershed Foundation | 15,000 |
| MSU Media & Theatre Arts Dept. | 20,000 |
| Northern Lights Institute | 9,600 |
| Montana Assn. of Symphony Orch. | 4,500 |
| Daly Mansion Preserv. Trust | 25,000 |
| Red Lodge Music Festival | 10,000 |
| Bigfork Center for Perf. Arts | 9,000 |
| Montana Folklife Project | 50,000 |
| KEMC Radio | 20,000 |
| U of M School of Fine Arts | 20,000 |
| Helena Arts Council | 10,000 |
| Copper Village Museum | 11,000 |
| KUFM Radio | 20,000 |
| Montana Repertory Theatre | 25,000 |
| Wibaux County Museum Board | 3,784 |
| Montana Ballet Company | 8,500 |
| Bigfork Center for the Perf. Arts Fdn. | 15,000 |
| Garden City Ballet | 7,500 |
| Montana Dance Arts Assn. | 5,000 |

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| | |
|---|---|
| Helena Symphony Society | 10,000 |
| Montana State Theatre Assn. | 5,000 |
| MT Indian Art & Culture Assoc. | 10,000 |
| Fox Committee for the Perf. Arts | 10,000 |
| Montana Fish, Wildlife & Parks | 2,000 |
| Growth Thru Art, Inc. | 10,000 |
| Dillon Jr. Fiddlers Assoc. | 9,000 |
| Stillwater Historical Society | 5,500 |
| Ikebana International | 1,500 |
| Polson City Library | 2,000 |
| St. Vincent Hospital | 6,630 |
| Huntley Project Museum | 1,000 |
| Huntley Project Museum | 440 |
| Libby MIA Writers Group | 1,500 |
| Broadway 215 | 2,000 |
| Bigfork Art & Cultural Center | 3,000 |
| Cascade County Artist Speak | 7,500 |
| Grandstreet Theatre | 8,125 |

(4) An amount not to exceed $10,400 is appropriated to the Montana arts council for project evaluations from any funds that revert from the projects subject to the appropriations in subsection (3). The evaluations must be done after July 1, 1990, for the purpose of preparing a report on the projects for the 52nd legislature.

(5) Any funds that revert from the projects subject to the appropriations in subsection (3) may be used to increase the grant to the Stillwater Historical Society up to a maximum of $9,000.

Section 4. **Reversion of granted funds.** (1) On October 1, 1990, all project funds reappropriated from the 1989 biennium, but not disbursed, must revert to the cultural and aesthetic projects account provided for in 15-35-108. If the funds in the cultural and aesthetic project account are insufficient to fund projects at the appropriation levels in [section 3(3)], the Montana arts council shall allocate the available funds on a pro rata basis to the authorized projects.

(2) On July 1, 1991, any unencumbered balance of the 1991 biennium grants must revert to the cultural and aesthetic projects account provided for in 15-35-108.

Section 5. **Effective date.** [This act] is effective July 1, 1989.

Approved May 11, 1989.

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# CHAPTER NO. 657

[HB 621]

AN ACT TO AMEND THE UNIFORM HEALTH CARE INFORMATION ACT TO AUTHORIZE A FAMILY MEMBER OF A DECEASED PATIENT TO EXERCISE THE RIGHTS PROVIDED FOR UNDER THE ACT; TO CLARIFY THE RECORDS THAT MUST BE KEPT OF PERSONS EXAMINING HEALTH CARE INFORMATION; TO AUTHORIZE DISCLOSURE OF HEALTH CARE INFORMATION TO THIRD-PARTY HEALTH CARE PAYORS; TO INCLUDE INVESTIGATIVE SUBPOENAS UNDER COMPULSORY PROCESS; TO ALLOW A HEALTH CARE PROVIDER TO DENY ACCESS TO RECORDS UNDER COMPULSORY PROCESS PENDING JUDICIAL REVIEW; TO CLARIFY THAT INFORMATION THAT MIGHT DISCLOSE BIRTH OUT OF WEDLOCK IS TO BE DISCLOSED ONLY IN ACCORDANCE WITH SECTION 50-15-206, MCA; AND AMENDING SECTIONS 50-16-522, 50-16-525, 50-16-529, 50-16-535, 50-16-536, AND 50-16-542, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 50-16-522, MCA, is amended to read:

**"50-16-522. Representative of deceased patient.** A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by *the surviving spouse, a parent, an adult child, an adult sibling, or any other person* who *is* authorized by law to act for him."

Section 2. Section 50-16-525, MCA, is amended to read:

**"50-16-525. Disclosure by health care provider.** (1) Except as authorized in 50-16-529 and 50-16-530 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529*(1) or* (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed."

Section 3. Section 50-16-529, MCA, is amended to read:

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**"50-16-529. Disclosure without patient's authorization based on need to know.** A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; *or to a third-party health care payor who requires health care information* and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

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(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(8) to an official of a penal or other custodial institution in which the patient is detained."

Section 4. Section 50-16-535, MCA, is amended to read:

**"50-16-535. When health care information available by compulsory process.** *(1)* Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

*(a)* the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

*(b)* the patient has waived the right to claim confidentiality for the health care information sought;

*(c)* the patient is a party to the proceeding and has placed his physical or mental condition in issue;

*(d)* the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

*(e)* the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

*(f)* a patient's health care information is to be used in the patient's commitment proceeding;

*(g)* the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection *(i)*;

*(h)* the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

*(i)* a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; *or*

*(j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.*

*(2) Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative,*

*or administrative proceeding where disclosure is otherwise prohibited by law.*"

Section 5. Section 50-16-536, MCA, is amended to read:

"**50-16-536. Method of compulsory process.** (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535 *(1)(b), (1)(d), or (1)(e)* or in a civil proceeding or investigation under 50-16-535 *(1)(i)*, the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535 *(1)(b), (1)(d), or (1)(e)* or in a civil proceeding under 50-16-535 *(1)(i)*, that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

*(3) In response to service of compulsory process or discovery requests, where authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.*

*(4) Where access to health care is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.*

*(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the health care provider's actual cost for providing the information, and may deny examination or copying of the information until the fee is paid.*

*(6)* Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

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Section 6. Section 50-16-542, MCA, is amended to read:

**"50-16-542. Denial of examination and copying.** (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

*(e) the health care information might disclose birth out of wedlock or provide information from which knowledge of birth out of wedlock might be obtained and which information is protected from disclosure pursuant to 50-15-206;*

*(f)* the health care provider obtained the information from a person other than the patient; or

*(g)* access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection."

Section 7. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved May 11, 1989.

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# CHAPTER NO. 658

[HB 707]

AN ACT PROVIDING FOR A THOROUGH STUDY THAT INCLUDES A PILOT PROGRAM TO LEASE WATER RIGHTS FOR THE PURPOSE OF MAINTAINING OR ENHANCING STREAMFLOWS FOR THE BENEFIT OF FISHERIES IN STREAM REACHES DESIGNATED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION; SPECIFYING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IS THE LESSEE AND ALLOWING THE DEPARTMENT TO ACCEPT CONTRIBUTIONS FROM PUBLIC OR PRIVATE ENTITIES FOR THE PURPOSE OF ACQUIRING LEASES; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO COMPLETE A STUDY REPORT BY DECEMBER 1, 1990, THAT INCLUDES RECOMMENDATIONS ON WATER LEASING FOR STREAMFLOWS UNDER THIS ACT; APPROPRIATING FEDERAL SPECIAL REVENUE TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO UNDERTAKE A WATER LEASING STUDY; AMENDING SECTIONS 85-2-102, 85-2-402, AND 85-2-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 85-2-102, MCA, is amended to read:

**"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

*(a)* divert, impound, or withdraw (including by stock for stock water) a quantity of water;

*(b)* in the case of a public agency, to reserve water in accordance with 85-2-316; *or*

*(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with [section 6].*

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; *and*

*(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under [section 6].*

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(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

*(6) "Commission" means the fish and game commission provided for in 2-15-3402.*

*(7)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

*(8)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

*(9)* "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

*(10)* "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

*(11)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

*(12)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

*(13)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

*(14)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

*(15)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

*(16)* "Water division" means a drainage basin as defined in 3-7-102.

*(17)* "Water judge" means a judge as provided for in Title 3, chapter 7.

*(18)* "Water master" means a master as provided for in Title 3, chapter 7.

*(19)* "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-402, MCA, is amended to read:

**"85-2-402. Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted

under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) *Except for a lease authorization pursuant to [section 6] that does not require appropriation works, the* proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

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(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings

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upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(9) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(10) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(11) A change in appropriation right contrary to the provisions of this section is invalid. *An* officer, agent, agency, or employee of the state may *not* knowingly permit, aid, or assist in any manner *an* unauthorized change in appropriation right. *A* person or corporation may *not*, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 3. Section 85-2-404, MCA, is amended to read:

**"85-2-404. Abandonment of appropriation right.** (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right or ceases using his appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for his use, there *is* a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) If an appropriator ceases to use all or part of his appropriation right because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially

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abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

*(4) The lease of an existing right pursuant to [section 6] does not constitute an abandonment by the lessor or serve as evidence that could be used to establish an abandonment by the lessor of any part of the right.*

*(5)* Subsections (1) and (2) do not apply to existing rights until they have been determined in accordance with part 2 of this chapter."

Section 4. **Board designation of eligible stream reaches.** (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the board for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to [section 6] may occur.

(2) The board may declare a stream reach eligible for leasing pursuant to [section 6] only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The board may designate no more than five stream reaches in the state where water leasing pursuant to [section 6] may occur.

Section 5. **Contributions for leasing appropriation rights — general spending authority.** (1) The department may accept contributions from public or private entities for the purpose of leasing appropriation rights to maintain or enhance instream flows for the benefit of fisheries.

(a) Any contributions accepted by the department under this section must be deposited in the fish and wildlife mitigation trust fund established in 87-1-611.

(b) The department shall expend money obtained under this section and deposited in the fish and wildlife mitigation trust fund exclusively to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries.

(2) The department may also expend other departmental funds to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries.

Section 6. **Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

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(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to [section 4].

(b) Upon receipt of an application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 4 years but may be renewed for up to 10 years per renewal, if allowed by law and upon notification to the department. If this section terminates without reauthorization by the legislature, all leases and lease authorizations expire on the date of termination. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease

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and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to his rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the original lease, the department may modify or revoke the lease authorization if an appropriator, other than an appropriator described in subsection (2)(i), proves by substantial credible evidence that his water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms, the renewal of the lease, or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing measuring devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) A study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete a final report by December 1, 1990.

Section 7. **Appropriation of federal revenue for water leasing study.** For the biennium ending June 30, 1991, the department of fish, wildlife, and parks may expend up to $60,000 of federal special revenue to undertake the water leasing study required under [section 6].

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Codification instruction.** (1) [Sections 4 and 6] are intended to be codified as an integral part of Title 85, chapter 2, part 4, and the provisions of Title 85, chapter 2, part 4, apply to [sections 4 and 6].

(2) [Section 5] is intended to be codified as an integral part of Title 87, chapter 1, part 6, and the provisions of Title 87, chapter 1, part 6, apply to [section 5].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Section 11. **Termination.** [This act] terminates June 30, 1993.

Approved May 11, 1989

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# CHAPTER NO. 659

[HB 769]

## THE MONTANA SUSTAINABLE AGRICULTURE RESEARCH AND EDUCATION ACT.

WHEREAS, an ever-increasing number of farmers and ranchers in Montana are seeking ways to adopt resource conserving, energy efficient, and economical production techniques that improve soil quality, protect ground and surface water resources, reduce soil erosion, and generate higher value cash crops; and

WHEREAS, over the long term, adoption of more diversified, resource conserving systems of agricultural production can benefit the producing, consuming, and tax-paying public; and

WHEREAS, the widespread adoption of environmentally sound and economically viable agriculture production management systems depends on a program that will allow effective broad-based transfer of low-input, sustainable agriculture information to Montana producers.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Montana Sustainable Agriculture Research and Education Act".

Section 2. **Purpose.** The purpose of [this act] is to promote more research and education on sustainable agricultural practices, such as crop rotations, green manuring, integrated pest management, and maintenance of livestock health and quality with reduced use of growth hormones and antibiotics. [This act] is intended to foster economically and ecologically beneficial means of soil improvement, pest management, irrigation, cultivation, harvesting, animal husbandry, transportation, and marketing for Montana agriculture, based on methods designed to accomplish the following:

(1) control pests and diseases of agricultural importance through management practices and alternatives that reduce or eliminate dependence on pesticides and petrochemicals;

(2) improve soil fertility and tilth through the use of practices that reduce dependence on synthetically compounded petrochemical-based fertilizers;

(3) produce, process, and distribute food and fiber in ways that consider the interactions among soil, plants, water, air, animals, tillage, machinery, labor, energy, and transportation to enhance resource efficiency, conservation, and public health; and

(4) provide Montana farmers and ranchers with useful agriculture production and marketing information on alternative and specialty crops and livestock.

Section 3. **Duties of Montana agricultural experiment station and cooperative extension service.** The Montana agricultural experiment station and the cooperative extension service shall:

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(1) develop a usable data base of existing research in low-input, sustainable agriculture;

(2) conduct educational programs for producers using material from the data base. Programs must include teaching producers techniques of low-input agriculture, assessment of risks involved with change, and marketing of products from their farms and ranches.

(3) extend research on the use of legumes to supply a portion of the nitrogen required by field crops;

(4) work with producers in establishing integrated pest management;

(5) begin research and development of marketable specialty crops and livestock that are integral to sustainable farming systems; and

(6) identify specific areas in which additional research is needed to enhance the adoption and success of low-input, sustainable agriculture in Montana.

Section 4. **Report to legislature.** The Montana agricultural experiment station and the cooperative extension service shall report to the legislature regarding the expenditures, activities, and outcomes of the program provided for in [this act].

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved April 25, 1989.

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# CHAPTER NO. 660

[HB 786]

AN ACT GENERALLY REVISING PROVISIONS CONCERNING PERSONNEL CLASSIFICATION AND COMPENSATION FOR STATE EMPLOYEES; INCREASING COMPENSATION FOR CERTAIN ELECTED OFFICIALS AND STATE EMPLOYEES; CLARIFYING THAT TEACHERS EMPLOYED BY THE DEPARTMENT OF FAMILY SERVICES ARE EXEMPT FROM THE STATE PERSONNEL CLASSIFICATION PLAN; REMOVING THE PROVISION FREEZING THE COMPENSATION OF EMPLOYEES WHO ARE EXEMPT FROM THE CLASSIFICATION PLAN; PROVIDING PAY SCHEDULES FOR FISCAL YEARS 1990 AND 1991 FOR CERTAIN STATE EMPLOYEES; REQUIRING THE BOARD OF REGENTS TO MAINTAIN ITS GROUP BENEFITS PLAN ON AN ACTUARIALLY SOUND BASIS; ESTABLISHING EMPLOYER CONTRIBUTION LEVELS FOR GROUP BENEFITS FOR FISCAL YEARS 1990 AND THEREAFTER; CREATING A COMMITTEE ON STATE EMPLOYEE COMPENSATION; APPROPRIATING FUNDS FOR PAYMENT OF COMPENSATION AND GROUP BENEFITS AND FOR USE BY THE COMMITTEE ON STATE EMPLOYEE COMPENSATION; AMENDING SECTIONS 2-16-405, 2-18-103, 2-18-104, 2-18-301, 2-18-303, 2-18-312 THROUGH 2-18-315, 2-18-702, 2-18-703, 13-37-106, AND 15-2-102, MCA; AND PROVIDING EFFECTIVE DATES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-16-405, MCA, is amended to read:

"**2-16-405. Salaries of certain elected state officials.** The salaries paid to certain elected officials of the state of Montana for fiscal year *1990* and following years are:

| | *Fiscal Year 1990* | *Following June 30, 1990* |
|---|---|---|
| Governor | *$51,713* | *$53,006* |
| Lieutenant governor | *$37,044* | *$37,970* |
| Attorney general | *$47,166* | *$48,345* |
| State auditor | *$34,176* | *$35,030* |
| Superintendent of public instruction | *$40,664* | *$41,681* |
| Public service commission chairman | *$38,297* | *$39,254* |
| Public service commissioners, other than chairman | *$37,044* | *$37,970* |
| Secretary of state | *$34,176* | *$35,030* |
| Clerk of the supreme court | *$33,211* | *$34,041*" |

Section 2. Section 2-18-103, MCA, is amended to read:

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"**2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions *or family services*;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation; and

(13) assistant director for security of the Montana state lottery."

Section 3. Section 2-18-104, MCA, is amended to read:

"**2-18-104. Exemption for personal staff — limit.** (1) Subject to the limitations in subsections (2) and (3), members of a personal staff are exempt from the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013.

(2) The personal staff who are exempted by subsection (1) may not exceed 10 unless otherwise approved by the department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15.

(3) The number of members of the personal staff of the public service commission who are exempted by subsection (1) may not exceed 10."

Section 4. Section 2-18-301, MCA, is amended to read:

"**2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

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(2) It is the intent of the legislature that, for the biennium ending June 30, *1991*, the:

(a) pay schedules provided for in 2-18-312 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the *51st* legislature;

(b) pay levels provided for in 2-18-312 through 2-18-315 may not be increased through collective bargaining after adjournment of the *51st* legislature; and

(c) total funds required to implement the pay schedules provided for in 2-18-312 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the *51st* legislature.

(3) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(4) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 5. Section 2-18-303, MCA, is amended to read:

**"2-18-303. Procedures for utilizing pay schedules.** (1) The pay *schedules* provided in 2-18-312 *must* be implemented as follows:

(a) The pay *schedules* provided in 2-18-312 *indicate* the annual compensation for the fiscal years ending June 30, *1990*, and June 30, *1991*, for each grade and step for positions classified under the provisions of part 2 of this chapter.

(b) Each new employee shall advance from step 1 to step 2 of a grade after successfully completing 6 months of probationary service. The anniversary date of an employee *must* be established at the end of the probationary period in accordance with rules promulgated by the department.

(c) (i) The compensation of each employee on the first day of the first pay period in fiscal year *1990 is* that amount *corresponding* to the grade and step occupied on the last day of fiscal year *1989*.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1991 is* that amount *corresponding* to the grade and step occupied on the last day of fiscal year *1990*.

(2) The pay *schedules* provided in 2-18-312 and the provisions of subsection (1) do not apply to those teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313 *through* 2-18-315.

(3) The pay schedules provided in 2-18-313 *through* 2-18-315 *must* be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed under

the authority of the department of institutions or the department of family services for fiscal years *1990* and *1991*.

(ii) *On* the first day of the first pay period in July *1989, each teacher shall advance three steps on the appropriate pay schedule for fiscal year 1990 from* the step *that he* occupied on June 30, *1989*.

(iii) The compensation of each teacher on the first day of the first pay period in July *1990 is* that amount *corresponding* to his level of *academic* achievement and the step occupied on June 30, *1990*.

(b) (i) The pay *schedules* provided in 2-18-314 *indicate* the maximum hourly compensation for fiscal years ending June 30, *1990*, and June 30, *1991*, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1990* or *1991 is* that amount *corresponding* to *the* grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay *schedules* provided in 2-18-315 *indicate* the maximum hourly compensation for fiscal years ending June 30, *1990*, and June 30, *1991*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year *1990* or *1991 is* that amount *corresponding* to *the* grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) *A* member of a bargaining unit may *not* receive the amounts indicated in the respective pay schedules provided in 2-18-312 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, *1991*.

(ii) *If* negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) are not completed by July 1, *1989*, retroactivity to that date may be negotiated.

(iii) *If* negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) are not completed by July 1, *1989*, members of the bargaining unit involved *must* continue to receive the compensation they were receiving as of June 30, *1989*.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-312 through 2-18-315 may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee *may* not be reduced by the implementation of the pay schedules provided for in 2-18-312 through 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

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(7) The department may develop programs *that* enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it *is* a negotiable subject under 39-31-305.

*(8) The department shall review the competitiveness of the compensation provided to registered nurses and other occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. Insofar as these adjustments may apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."*

Section 6. Section 2-18-312, MCA, is amended to read:

**"2-18-312. Statewide pay schedules for fiscal years 1990 and 1991.** *(1)* The statewide classification pay schedule for fiscal *year 1990* is as follows:

Annual Hours — 2080
Pay Matrix — State

Note: Includes Insurance
Matrix Type — Annual

| | STEP | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| GRADE | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 1 | 10,132 | 10,839 | 11,041 | 11,247 | 11,457 | 11,671 | 11,890 | 12,113 | 12,340 | 12,572 | 12,809 | 13,050 | 13,542 |
| 2 | 10,614 | 11,357 | 11,569 | 11,786 | 12,007 | 12,232 | 12,462 | 12,696 | 12,935 | 13,179 | 13,428 | 13,682 | 14,200 |
| 3 | 11,138 | 11,921 | 12,145 | 12,373 | 12,606 | 12,843 | 13,085 | 13,332 | 13,584 | 13,841 | 14,103 | 14,370 | 14,915 |
| 4 | 11,711 | 12,537 | 12,773 | 13,014 | 13,259 | 13,509 | 13,764 | 14,024 | 14,290 | 14,561 | 14,837 | 15,119 | 15,694 |
| 5 | 12,343 | 13,216 | 13,466 | 13,721 | 13,981 | 14,246 | 14,516 | 14,792 | 15,073 | 15,360 | 15,652 | 15,950 | 16,558 |
| 6 | 13,035 | 13,960 | 14,224 | 14,494 | 14,769 | 15,050 | 15,336 | 15,628 | 15,926 | 16,230 | 16,540 | 16,856 | 17,501 |
| 7 | 13,802 | 14,785 | 15,066 | 15,353 | 15,645 | 15,943 | 16,247 | 16,557 | 16,873 | 17,196 | 17,525 | 17,861 | 18,546 |
| 8 | 14,629 | 15,674 | 15,973 | 16,278 | 16,589 | 16,906 | 17,229 | 17,559 | 17,895 | 18,238 | 18,588 | 18,945 | 19,673 |
| 9 | 15,547 | 16,662 | 16,980 | 17,305 | 17,636 | 17,974 | 18,319 | 18,671 | 19,030 | 19,396 | 19,769 | 20,150 | 20,926 |
| 10 | 16,553 | 17,743 | 18,083 | 18,430 | 18,784 | 19,145 | 19,513 | 19,888 | 20,271 | 20,662 | 21,060 | 21,466 | 22,295 |
| 11 | 17,652 | 18,925 | 19,289 | 19,660 | 20,038 | 20,424 | 20,818 | 21,220 | 21,630 | 22,048 | 22,474 | 22,909 | 23,796 |
| 12 | 18,868 | 20,233 | 20,623 | 21,021 | 21,427 | 21,841 | 22,263 | 22,693 | 23,132 | 23,580 | 24,037 | 24,503 | 25,477 |
| 13 | 20,204 | 21,669 | 22,088 | 22,515 | 22,951 | 23,395 | 23,848 | 24,310 | 24,788 | 25,281 | 25,783 | 26,295 | 27,341 |
| 14 | 21,880 | 23,471 | 23,926 | 24,390 | 24,872 | 25,366 | 25,870 | 26,384 | 26,909 | 27,444 | 27,991 | 28,547 | 29,683 |
| 15 | 23,625 | 25,369 | 25,873 | 26,388 | 26,912 | 27,447 | 27,994 | 28,550 | 29,118 | 29,697 | 30,289 | 30,891 | 32,121 |
| 16 | 25,613 | 27,529 | 28,077 | 28,635 | 29,205 | 29,786 | 30,379 | 30,984 | 31,601 | 32,230 | 32,872 | 33,527 | 34,862 |
| 17 | 27,787 | 29,867 | 30,462 | 31,069 | 31,687 | 32,317 | 32,961 | 33,617 | 34,286 | 34,969 | 35,665 | 36,375 | 37,825 |
| 18 | 30,190 | 32,451 | 33,097 | 33,756 | 34,429 | 35,114 | 35,813 | 36,527 | 37,255 | 37,997 | 38,754 | 39,526 | 41,101 |
| 19 | 32,831 | 35,291 | 35,994 | 36,710 | 37,441 | 38,187 | 38,948 | 39,724 | 40,515 | 41,323 | 42,146 | 42,986 | 42,986 |
| 20 | 35,714 | 38,391 | 39,156 | 39,936 | 40,731 | 41,543 | 42,371 | 43,216 | 44,077 | 44,955 | 45,851 | 45,851 | 45,851 |
| 21 | 38,885 | 41,802 | 42,635 | 43,485 | 44,352 | 45,236 | 46,138 | 47,058 | 47,996 | 48,953 | 48,953 | 48,953 | 48,953 |
| 22 | 42,366 | 45,544 | 46,452 | 47,379 | 48,324 | 49,287 | 50,270 | 51,273 | 52,295 | 52,295 | 52,295 | 52,295 | 52,295 |
| 23 | 46,174 | 49,639 | 50,629 | 51,638 | 52,669 | 53,719 | 54,790 | 55,883 | 55,883 | 55,883 | 55,883 | 55,883 | 55,883 |
| 24 | 50,358 | 54,137 | 55,218 | 56,320 | 57,443 | 58,589 | 59,757 | 59,757 | 59,757 | 59,757 | 59,757 | 59,757 | 59,757 |
| 25 | 54,953 | 59,079 | 60,258 | 61,460 | 62,686 | 63,936 | 63,936 | 63,936 | 63,936 | 63,936 | 63,936 | 63,936 | 63,936 |

*(2) The statewide classification pay schedule for fiscal year 1991 is as follows:*

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*Annual Hours — 2080*
*Pay Matrix — State*

*Note: Includes Insurance*
*Matrix Type — Annual*

*STEP*

| GRADE | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 10,932 | 11,639 | 11,841 | 12,047 | 12,257 | 12,471 | 12,690 | 12,913 | 13,140 | 13,372 | 13,609 | 13,850 | 14,342 |
| 2 | 11,414 | 12,157 | 12,369 | 12,586 | 12,807 | 13,032 | 13,262 | 13,496 | 13,735 | 13,979 | 14,228 | 14,482 | 15,000 |
| 3 | 11,938 | 12,721 | 12,945 | 13,173 | 13,406 | 13,643 | 13,885 | 14,132 | 14,384 | 14,641 | 14,903 | 15,170 | 15,715 |
| 4 | 12,511 | 13,337 | 13,573 | 13,814 | 14,059 | 14,309 | 14,564 | 14,824 | 15,090 | 15,361 | 15,637 | 15,919 | 16,494 |
| 5 | 13,143 | 14,016 | 14,266 | 14,521 | 14,781 | 15,046 | 15,316 | 15,592 | 15,873 | 16,160 | 16,452 | 16,750 | 17,358 |
| 6 | 13,835 | 14,760 | 15,024 | 15,294 | 15,569 | 15,850 | 16,136 | 16,428 | 16,726 | 17,030 | 17,340 | 17,656 | 18,301 |
| 7 | 14,602 | 15,585 | 15,866 | 16,153 | 16,445 | 16,743 | 17,047 | 17,357 | 17,673 | 17,996 | 18,325 | 18,661 | 19,346 |
| 8 | 15,429 | 16,474 | 16,773 | 17,078 | 17,389 | 17,706 | 18,029 | 18,359 | 18,695 | 19,038 | 19,388 | 19,745 | 20,473 |
| 9 | 16,347 | 17,462 | 17,780 | 18,105 | 18,436 | 18,774 | 19,119 | 19,471 | 19,830 | 20,196 | 20,569 | 20,950 | 21,726 |
| 10 | 17,353 | 18,543 | 18,883 | 19,230 | 19,584 | 19,945 | 20,313 | 20,688 | 21,071 | 21,462 | 21,860 | 22,266 | 23,095 |
| 11 | 18,452 | 19,725 | 20,089 | 20,460 | 20,838 | 21,224 | 21,618 | 22,020 | 22,430 | 22,848 | 23,274 | 23,709 | 24,596 |
| 12 | 19,668 | 21,033 | 21,423 | 21,821 | 22,227 | 22,641 | 23,063 | 23,493 | 23,932 | 24,380 | 24,839 | 25,317 | 26,315 |
| 13 | 21,004 | 22,469 | 22,888 | 23,315 | 23,751 | 24,195 | 24,648 | 25,119 | 25,609 | 26,114 | 26,629 | 27,153 | 28,226 |
| 14 | 22,680 | 24,271 | 24,726 | 25,201 | 25,695 | 26,201 | 26,718 | 27,245 | 27,783 | 28,331 | 28,892 | 29,462 | 30,626 |
| 15 | 24,425 | 26,204 | 26,721 | 27,249 | 27,786 | 28,334 | 28,895 | 29,465 | 30,047 | 30,640 | 31,247 | 31,864 | 33,125 |
| 16 | 26,454 | 28,418 | 28,980 | 29,552 | 30,136 | 30,732 | 31,339 | 31,960 | 32,592 | 33,237 | 33,895 | 34,566 | 35,935 |
| 17 | 28,683 | 30,815 | 31,425 | 32,047 | 32,680 | 33,326 | 33,986 | 34,658 | 35,344 | 36,044 | 36,758 | 37,485 | 38,972 |
| 18 | 31,146 | 33,463 | 34,125 | 34,801 | 35,491 | 36,193 | 36,909 | 37,641 | 38,387 | 39,148 | 39,924 | 40,715 | 42,330 |
| 19 | 33,853 | 36,374 | 37,095 | 37,829 | 38,578 | 39,343 | 40,123 | 40,918 | 41,729 | 42,557 | 43,401 | 44,262 | 44,262 |
| 20 | 36,808 | 39,552 | 40,336 | 41,135 | 41,950 | 42,783 | 43,631 | 44,497 | 45,380 | 46,280 | 47,198 | 47,198 | 47,198 |
| 21 | 40,058 | 43,048 | 43,902 | 44,773 | 45,662 | 46,568 | 47,492 | 48,435 | 49,397 | 50,378 | 50,378 | 50,378 | 50,378 |
| 22 | 43,626 | 46,884 | 47,814 | 48,764 | 49,733 | 50,720 | 51,728 | 52,756 | 53,803 | 53,803 | 53,803 | 53,803 | 53,803 |
| 23 | 47,529 | 51,081 | 52,096 | 53,130 | 54,187 | 55,263 | 56,361 | 57,481 | 57,481 | 57,481 | 57,481 | 57,481 | 57,481 |
| 24 | 51,818 | 55,691 | 56,799 | 57,929 | 59,080 | 60,255 | 61,452 | 61,452 | 61,452 | 61,452 | 61,452 | 61,452 | 61,452 |
| 25 | 56,528 | 60,757 | 61,965 | 63,198 | 64,454 | 65,735 | 65,735 | 65,735 | 65,735 | 65,735 | 65,735 | 65,735 | 65,735" |

Section 7. Section 2-18-313, MCA, is amended to read:

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**"2-18-313. Teachers' pay schedules.** *(1) (a) The 12-month pay schedule for teachers for fiscal year 1990 is as follows:*

*Annual Hours — 2080* *Note: Includes Insurance*
*Term — Twelve Months* *Matrix Type — Annual*

| | *Education Level* | | | | | |
|---|---|---|---|---|---|---|
| *STEP* | *BA* | *BA+1* | *BA+2* | *BA+3* | *MA* | *MA+1* |
| *1* | *21,228* | *21,870* | *22,529* | *22,850* | *23,173* | *23,832* |
| *2* | *21,983* | *22,699* | *23,416* | *23,775* | *24,134* | *24,859* |
| *3* | *22,738* | *23,529* | *24,302* | *24,706* | *25,110* | *25,905* |
| *4* | *23,494* | *24,362* | *25,206* | *25,652* | *26,097* | *26,949* |
| *5* | *24,247* | *25,206* | *26,115* | *26,598* | *27,084* | *27,995* |
| *6* | *25,016* | *26,060* | *27,027* | *27,548* | *28,071* | *29,041* |
| *7* | *25,786* | *26,908* | *27,934* | *28,496* | *29,056* | *30,083* |
| *8* | *26,561* | *27,760* | *28,847* | *29,446* | *30,045* | *31,127* |
| *9* | *27,335* | *28,610* | *29,756* | *30,392* | *31,033* | *32,172* |
| *10* | *28,108* | *29,464* | *30,664* | *31,340* | *32,018* | *33,218* |
| *11* | *28,884* | *30,286* | *31,571* | *32,288* | *33,005* | *34,260* |
| *12* | *28,884* | *30,286* | *31,571* | *32,288* | *33,005* | *34,260* |
| *13* | *28,884* | *30,286* | *31,571* | *32,288* | *33,005* | *34,260* |

*(b) The 9-month pay schedule for teachers for fiscal year 1990 is as follows:*

*Annual Hours — 1480* *Note: Includes Insurance*
*Term — Nine Months* *Matrix Type — Annual*

| | *Education Level* | | | | | |
|---|---|---|---|---|---|---|
| *STEP* | *BA* | *BA+1* | *BA+2* | *BA+3* | *MA* | *MA+1* |
| *1* | *16,451* | *16,933* | *17,427* | *17,668* | *17,910* | *18,404* |
| *2* | *17,017* | *17,554* | *18,092* | *18,361* | *18,631* | *19,168* |
| *3* | *17,583* | *18,176* | *18,757* | *19,056* | *19,352* | *19,933* |
| *4* | *18,151* | *18,801* | *19,422* | *19,749* | *20,074* | *20,697* |
| *5* | *18,715* | *19,422* | *20,087* | *20,441* | *20,796* | *21,4(* |
| *6* | *19,283* | *20,047* | *20,755* | *21,136* | *21,518* | *22,228* |
| *7* | *19,846* | *20,667* | *21,418* | *21,829* | *22,239* | *22,990* |
| *8* | *20,414* | *21,291* | *22,086* | *22,524* | *22,963* | *23,754* |
| *9* | *20,980* | *21,913* | *22,751* | *23,217* | *23,685* | *24,519* |
| *10* | *21,546* | *22,537* | *23,416* | *23,910* | *24,406* | *25,304* |
| *11* | *22,113* | *23,139* | *24,079* | *24,606* | *25,144* | *26,085* |
| *12* | *22,113* | *23,139* | *24,079* | *24,606* | *25,144* | *26,085* |
| *13* | *22,113* | *23,139* | *24,079* | *24,606* | *25,144* | *26,085* |

*(2) (a) The 12-month pay schedule for teachers for fiscal year 1991 is as follows:*

*Annual Hours — 2080* *Note: Includes Insurance*
*Term — Twelve Months* *Matrix Type — Annual*

| | *Education Level* | | | | | |
|---|---|---|---|---|---|---|
| *STEP* | *BA* | *BA+1* | *BA+2* | *BA+3* | *MA* | *MA+1* |
| *1* | *22,028* | *22,670* | *23,329* | *23,650* | *23,973* | *24,632* |
| *2* | *22,783* | *23,499* | *24,216* | *24,575* | *24,938* | *25,681* |
| *3* | *23,538* | *24,329* | *25,111* | *25,525* | *25,939* | *26,754* |
| *4* | *24,294* | *25,172* | *26,037* | *26,494* | *26,950* | *27,824* |

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| | | | | | | |
|---|---|---|---|---|---|---|
| *5* | *25,054* | *26,037* | *26,969* | *27,464* | *27,962* | *28,896* |
| *6* | *25,842* | *26,913* | *27,904* | *28,438* | *28,974* | *29,968* |
| *7* | *26,632* | *27,782* | *28,833* | *29,409* | *29,983* | *31,036* |
| *8* | *27,426* | *28,655* | *29,769* | *30,383* | *30,997* | *32,106* |
| *9* | *28,219* | *29,526* | *30,701* | *31,353* | *32,010* | *33,177* |
| *10* | *29,012* | *30,402* | *31,632* | *32,325* | *33,019* | *34,249* |
| *11* | *29,807* | *31,244* | *32,561* | *33,296* | *34,031* | *35,318* |
| *12* | *29,807* | *31,244* | *32,561* | *33,296* | *34,031* | *35,318* |
| *13* | *29,807* | *31,244* | *32,561* | *33,296* | *34,031* | *35,318* |

*(b) The 9-month pay schedule for teachers for fiscal year 1991 is as follows:*

*Annual Hours — 1480* *Note: Includes Insurance*
*Term — Nine Months* *Matrix Type — Annual*

*Education Level*

| *STEP* | *BA* | *BA+1* | *BA+2* | *BA+3* | *MA* | *MA+1* |
|---|---|---|---|---|---|---|
| *1* | *17,251* | *17,733* | *18,227* | *18,468* | *18,710* | *19,204* |
| *2* | *17,817* | *18,354* | *18,892* | *19,161* | *19,431* | *19,968* |
| *3* | *18,383* | *18,976* | *19,557* | *19,856* | *20,152* | *20,733* |
| *4* | *18,951* | *19,601* | *20,222* | *20,549* | *20,874* | *21,497* |
| *5* | *19,515* | *20,222* | *20,887* | *21,241* | *21,596* | *22,263* |
| *6* | *20,083* | *20,847* | *21,555* | *21,936* | *22,318* | *23,028* |
| *7* | *20,646* | *21,467* | *22,218* | *22,629* | *23,039* | *23,790* |
| *8* | *21,214* | *22,091* | *22,886* | *23,324* | *23,763* | *24,554* |
| *9* | *21,780* | *22,713* | *23,551* | *24,017* | *24,485* | *25,333* |
| *10* | *22,346* | *23,337* | *24,216* | *24,710* | *25,217* | *26,138* |
| *11* | *22,913* | *23,939* | *24,882* | *25,422* | *25,974* | *26,938* |
| *12* | *22,913* | *23,939* | *24,882* | *25,422* | *25,974* | *26,938* |
| *13* | *22,913* | *23,939* | *24,882* | *25,422* | *25,974* | *26,938"* |

Section 8. Section 2-18-314, MCA, is amended to read:

**"2-18-314. Liquor store occupations pay schedules.** *(1)* The pay schedule for liquor store occupations for fiscal *year 1990* is as follows:

Annual Hours — 2080 Note: With Insurance
Pay Matrix — Retail Clerk Matrix Type — Hourly

| Grade | $/Hour W/Ins. |
|---|---|
| L1 | *0.000* |
| L2 | *8.040* |
| L3 | *8.540* |
| L4 | *8.820* |
| L5 | *9.110* |
| L6 | *9.720* |
| L7 | *10.380* |
| L8 | *11.130* |

*(2) The pay schedule for liquor store occupations for fiscal year 1991 is as follows:*

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| *Annual Hours — 2080*<br>*Pay Matrix — Retail Clerk* | *Note: With Insurance*<br>*Matrix Type — Hourly* |
|---|---|
| *Grade* | *$/Hour*<br>*W/Ins.* |
| *L1* | *0.000* |
| *L2* | *8.425* |
| *L3* | *8.925* |
| *L4* | *9.205* |
| *L5* | *9.495* |
| *L6* | *10.105* |
| *L7* | *10.765* |
| *L8* | *11.515"* |

Section 9. Section 2-18-315, MCA, is amended to read:

**"2-18-315. Blue-collar pay schedules.** *(1)* The pay schedule for blue-collar workers for fiscal *year 1990* is as follows:

| Annual Hours — 2080<br>Pay Matrix — Blue-Collar | Note: With Insurance<br>Matrix Type — Hourly |
|---|---|
| Grade | $/Hour<br>W/Ins. |
| B1 | *8.51* |
| B2 | *8.91* |
| B3 | *9.31* |
| B4 | *9.71* |
| B5 | *10.11* |
| B6 | *10.51* |
| B7 | *10.91* |
| B8 | *11.31* |
| B9 | *11.71* |
| B10 | *12.11* |
| B11 | *12.51* |
| B12 | *12.91* |
| B00 | *13.31* |

*(2) The pay schedule for blue-collar workers for fiscal year 1991 is as follows:*

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| *Annual Hours — 2080*<br>*Pay Matrix — Blue-Collar* | *Note: With Insurance*<br>*Matrix Type — Hourly* |
|---|---|
| *Grade* | *$/Hour*<br>*W/Ins.* |
| *B1* | *8.90* |
| *B2* | *9.30* |
| *B3* | *9.70* |
| *B4* | *10.10* |
| *B5* | *10.50* |
| *B6* | *10.90* |
| *B7* | *11.30* |
| *B8* | *11.70* |
| *B9* | *12.10* |
| *B10* | *12.50* |
| *B11* | *12.90* |
| *B12* | *13.30* |
| *B00* | *13.70"* |

Section 10. Section 2-18-702, MCA, is amended to read:

**"2-18-702. Group insurance for public employees and officers.** (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents.

(2) State employees and elected officials, as defined in 2-18-701, may participate in such state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue his warrant therefor to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services shall be construed as group insurance and the dues payable under such plans shall be construed as premiums therefor.

*(5) If the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."*

Section 11. Section 2-18-703, MCA, is amended to read:

**"2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

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(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be *$130* per month for the fiscal *year* ending June 30, *1990*, and *$150 per month for the fiscal year ending* June 30, *1991*, and for each fiscal year thereafter. Permanent part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee *must* be transferred to an account established for this purpose by the department of administration and upon such transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member."

Section 12. Section 13-37-106, MCA, is amended to read:

"**13-37-106. Salary.** The commissioner of political practices is entitled to receive a salary of *$28,346 in fiscal* year *1990 and $29,055 in fiscal year 1991 and thereafter.*"

Section 13. Section 15-2-102, MCA, is amended to read:

"**15-2-102. Qualification and compensation.** (1) To be appointed a member of the state tax appeal board, a person must possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed may hold any other office under the laws of this state or any other state or any office under the government of the United States or under the government of any other state. He shall devote his entire time to the duties of the office and shall not hold any other position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(2) The member designated chairman as provided for in 15-2-103 shall receive a salary of *$29,082 in fiscal* year *1990 and $29,809 in fiscal year 1991 and thereafter.* The remaining state tax appeal board members shall be paid a salary of *$28,326 in fiscal* year *1990 and $29,034 in fiscal year 1991 and thereafter.* All members of the board shall receive travel expenses as provided for in 2-18-501 through 2-18-503, as amended, when away from the capital on official business."

Section 14. **Committee on state employee compensation.** (1) (a) There is a committee on state employee compensation.

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(b) The governor shall appoint seven members to the committee. Two of the members must be representatives of employee organizations and have knowledge of or experience in negotiating the pay schedules provided in 2-18-312 through 2-18-315.

(c) The president of the senate shall appoint one senator and the speaker of the house of representatives shall appoint one representative to the committee.

(2) A committee member shall serve until the committee terminates on July 1, 1991. A vacancy on the committee must be filled in the same manner as the original appointment.

(3) The governor shall appoint the chairman and vice chairman of the committee. The committee shall meet upon the call of the chairman or at the request of five members. Five members constitute a quorum to transact business.

(4) A member is entitled to compensation as provided in 2-15-122(5).

(5) The committee shall:

(a) examine policies governing state employee compensation in Montana;

(b) study compensation policies of other comparable governmental and private sector entities;

(c) review professional literature and research on compensation issues;

(d) analyze and assess various components of the Montana state employee compensation system;

(e) identify problems with the state employee compensation system and options for resolving these problems. State employees and managers may be surveyed to assist in identifying these problems and options.

(f) develop recommendations to maximize employee productivity and promote quality governmental services within available funding; and

(g) report its findings, recommendations, and any proposed legislation to the governor and the 52nd legislature.

(6) The state personnel division, department of administration, and the legislative council shall provide staff assistance to the committee.

Section 15. **Appropriation.** (1) (a) In addition to the appropriation in House Bill No. 100, there is appropriated $13,546,000 to the office of budget and program planning and $3,681,616 to the office of the commissioner of higher education from the general fund for the biennium ending June 30, 1991, to implement [this act] as it pertains to judicial and executive branch agencies.

(b) To implement [this act], the office of budget and program planning shall increase the expenditure authority of judicial and executive branch agencies by $16,450,000 for the biennium ending June 30, 1991, from funds other than from the general fund that accrue under the provisions of law to the respective agencies.

(2) The following money is appropriated to the listed agencies:

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| | Fiscal 1990 | | Fiscal 1991 | |
|---|---|---|---|---|
| | General Fund | State Special Revenue | General Fund | State Special Revenue |
| Legislative Auditor | $ 52,426 | | $109,735 | |
| Legislative Council | 38,221 | | 89,293 | |
| Legislative Fiscal Analyst | 18,550 | | 38,055 | |
| Environmental Quality Council | 5,329 | $ 81 | 11,119 | $ 164 |
| Consumer Counsel | | 5,154 | | 10,851 |
| Total | $114,526 | $5,235 | $248,202 | $11,015 |

(3) The appropriations in this section are subject to the provisions of House Bill No. 100.

(4) No money is appropriated in this section for salary increases for Montana university system contract faculty.

(5) There is appropriated $90,000 from the general fund to the department of administration for the biennium ending June 30, 1991, for use by the committee on state employee compensation provided for in [section 14]. These funds may be used for contracted services, salary and benefits for temporary staff, compensation for committee members, and other necessary expenses incurred by the committee in performing its duties as provided in [section 14].

Section 16. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 17. **Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 3] is effective July 1, 1989.

Approved May 11, 1989.

# CHAPTER NO. 661

[HB 795]

AN ACT AUTHORIZING THE ISSUANCE OF COLLEGIATE LICENSE PLATES; AUTHORIZING THE COLLECTION OF DONATIONS FOR ACADEMIC SCHOLARSHIPS IN ADDITION TO REGULAR LICENSE PLATE FEES AND THE DISTRIBUTION OF DONATIONS TO HIGHER EDUCATION INSTITUTIONS; PROVIDING AN APPROPRIATION; AMENDING SECTION 61-3-403, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 7] may be cited as the "Montana Collegiate License Plates Act".

Section 2. **Definition.** As used in [sections 1 through 7], the following definitions apply:

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(1) "Collegiate license plates" means license plates bearing the colors, numerals, letters, and insignia provided in [section 3] and issued as provided in [sections 4 through 6].

(2) "Institution" means:

(a) a unit of the Montana university system as designated in 20-25-201;

(b) a community college district as defined in 20-15-101; or

(c) a college or university located in Montana and accredited by a national or regional accrediting association for institutions of higher learning to grant baccalaureate degrees.

Section 3. **Collegiate license plates.** (1) Subject to the provisions of 61-3-332(3) and the requirement that collegiate license plates must have a white reflectorized background, the department shall design, cause to be manufactured, and issue collegiate license plates as provided in [sections 4 through 6].

(2) After consultation with each institution, the department shall prescribe the color and insignia to be displayed on the collegiate license plates for each institution.

(3) In addition to each institution's distinctive color and insignia provided in subsection (1), each collegiate license plate must:

(a) be imprinted consecutively with distinctive numerals from 1 through 99999, capital letters A through Z, or a combination of numerals and letters; and

(b) bear a nonremovable sticker denoting the correct county designation under 61-3-332.

(4) The department shall determine the minimum and maximum number of characters, including both numerals and letters, on the collegiate license plates.

(5) No issue of collegiate license plates may be ordered and manufactured for any individual institution unless at least 400 sets of plates are ordered and prepaid.

Section 4. **Application for collegiate license plates.** An applicant for collegiate license plates or renewal of collegiate license plates pursuant to [section 5] shall apply in the form and by the date the department requires.

Section 5. **Issuance — application — additional fee — disposition.** (1) The department shall issue or renew collegiate license plates upon receipt of an application that shows:

(a) compliance with 61-3-303, 61-3-304, 61-3-311, and 61-3-312; and

(b) payment to the county treasurer of:

(i) an initial application and manufacturing fee of $2.50, when required; and

(ii) an annual scholarship donation of $20 for the benefit of the institution named in the application.

(2) Once each month the county treasurer shall transfer to the state treasurer the total of the amounts collected for:

(a) the initial application and manufacturing fee for deposit in the Montana state prison industries account in the proprietary fund for appropriation by the legislature to pay the cost of manufacturing collegiate license plates; and

(b) scholarship donations provided for in subsection (1)(b)(ii), along with a schedule showing the number of collegiate license plates issued and the total donations received for the benefit of each institution.

(3) Once each month the state treasurer shall distribute to the student academic scholarship fund or foundation of each institution an amount equal to the total donations credited to that institution and transferred to the state treasurer by the county treasurers during the preceding month.

Section 6. **Personalized collegiate license plates.** (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for collegiate license plates may be combined with an application for personalized plates.

(2) An application for personalized collegiate license plates must be made on a form supplied by the department.

(3) Personalized collegiate license plates must bear the distinctive color and insignia as provided in [section 3].

Section 7. **Authorization to receive and transmit donations.** As provided in [section 5] and notwithstanding any other provisions of Title 7, Title 17, or this title:

(1) the county treasurer shall receive the annual scholarship donations provided for in [section 5] and once each month transmit those donations to the state treasurer; and

(2) the state treasurer shall accept the annual scholarship donations and once each month distribute the accumulated proceeds to the beneficiary institutions specified by and according to the totals contained in the county treasurers' reports.

Section 8. Section 61-3-403, MCA, is amended to read:

**"61-3-403. Color and design of personalized license plates — exception — county designation.** (1) *Except as provided in [section 6], the* personalized license plates *must* be the same color and design as regular passenger motor vehicle license plates and *must* consist of numbers or letters, or any combination thereof, not exceeding eight positions and not less than two positions, provided that there are no conflicts with existing passenger, commercial, trailer, motorcycle, quadricycle, or special license plate series under this title.

(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do

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not bear a county designation or no longer bear the correct county designation, the department shall provide nonremovable stickers bearing the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department."

Section 9. **Appropriation.** There is appropriated to the Montana state prison license plate factory $25,000 of spending authority from the proprietary fund for the 1990-91 biennium from revenue deposited under the provisions of [section 5(2)(a)].

Section 10. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 61, chapter 3, and the provisions of Title 61, chapter 3, apply to [sections 1 through 7].

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Applicability.** [Sections 4 through 7] apply to registrations of motor vehicles occurring after December 31, 1990.

Approved May 11, 1989.

# CHAPTER NO. 662

[SB 65]

AN ACT REVISING THE PROPERTY TAX FREEZE PROVISIONS; GRANTING TAXING JURISDICTIONS AUTHORITY TO EXCEED STATUTORY MILL LEVY LIMITATIONS; SPECIFYING THAT THE 5 PERCENT TAXABLE VALUATION DECREASE PROVISION IS BASED ON A COMPARISON WITH 1986 VALUES; REMOVING THE TERMINATION PROVISION OF THE BILL INTERPRETING THE PROPERTY TAX FREEZE; AMENDING SECTION 15-10-412, MCA; REPEALING SECTION 6, CHAPTER 654, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A DELAYED APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-10-412, MCA, is amended to read:

**"15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years

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thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, *except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.*

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal *or a sales assessment ratio study*; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) *a revaluation caused by:*

*(i)* construction, expansion, replacement, or remodeling of improvements that adds value to the property; *or*

*(ii) cyclical reappraisal or a sales assessment ratio study;*

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

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(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the *1986* tax year. If a taxing unit's taxable valuation decreases by 5% or more from the *1986* tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments; and

(h) revolving funds to support any categories specified in this subsection (8).

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

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(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

*(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.*"

Section 2. **Repealer.** Section 6, Chapter 654, Laws of 1987, is repealed.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Coordination instruction.** If 15-10-401, 15-10-402, 15-10-411, and 15-10-412 are repealed, [this act] is void.

Section 5. **Effective date — retroactive applicability — delayed applicability.** [This act] is effective on passage and approval and applies:

(1) retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988, for the revisions made to [section 1(7)]; and

(2) to taxable years beginning after December 31, 1989, for the revisions made to [section 1(3)(h) and (4)(a)].

Approved May 11, 1989.

# CHAPTER NO. 663

[SB 105]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO, WITH CERTAIN CONDITIONS AND RESTRICTIONS, PROVIDE TO THE DIRECTOR OF THE SELECTIVE SERVICE SYSTEM LISTS OF DRIVER'S LICENSE HOLDERS WHO WERE BORN IN SPECIFIED YEARS; AND AMENDING SECTION 2-6-109, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-6-109, MCA, is amended to read:

"**2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty.** (1) Except as provided in subsections (3), (4), (5),

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and (6), in order to protect the privacy of those who deal with state and local government:

(a) no agency may distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) no list of persons prepared by the agency may be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) Except as provided in 30-9-403, this section does not prevent an individual from compiling a mailing list by examination of original documents or applications which are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, *or to lists of persons holding driver's licenses provided for under [section 2].*

(5) This section shall not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to Title 20, chapter 30, or specifically exempted therefrom as provided in 20-30-102.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 2. **Providing information to selective service system.** At the request of the director of the selective service system, provided for in 50 U.S.C. 460, the department shall provide a list of persons born in specified years who are holders of driver's licenses for the exclusive purpose of assuring compliance with the military draft registration requirements of the federal Military Selective Service Act (50 U.S.C. 451, et seq.). The department shall notify the persons that information regarding them was released to the selective service system. The department may not provide the selective service system the social security or driver's license numbers of persons on the list for any purpose.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 61, chapter 5, part 1, and the provisions of Title 61, chapter 5, part 1, apply to [section 2].

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Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 12, 1989.

# CHAPTER NO. 664

[SB 241]

AN ACT GENERALLY REVISING THE JUDGES' RETIREMENT SYSTEM; REALLOCATING THE DISTRIBUTION OF DISTRICT COURT FEES TO MAINTAIN THE ACTUARIAL SOUNDNESS OF THE SYSTEM; INCREASING THE PERCENTAGE OF SALARY USED TO CALCULATE A MEMBER'S SERVICE RETIREMENT ALLOWANCE AFTER 15 YEARS OF SERVICE IN THE SYSTEM; AMENDING SECTIONS 19-5-404, 19-5-502, AND 25-1-201, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-5-404, MCA, is amended to read:

**"19-5-404. Contributions by the state.** The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201*(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6)* to the state, which shall first deposit in the fund an amount equal to 31% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund."

Section 2. Section 19-5-404, MCA, is amended to read:

**"19-5-404. Contributions by the state.** The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201*[(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6)]* to the state, which shall first deposit in the fund an amount equal to *34.71%* of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the public employees' retirement division of the department of administration to be credited to the fund."

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Section 3. Section 19-5-502, MCA, is amended to read:

**"19-5-502. Service retirement allowance.** Upon retirement from service, a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement. The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of 3 ⅛% per year of his final salary for the first 15 years' service and *1.785%* per year for each year's service *after 15 years.*"

Section 4. Section 25-1-201, MCA, is amended to read:

**"25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $60; for filing a complaint in intervention, from the intervenor, $60; and for filing a petition for dissolution of marriage, a fee of $100;

(b) from each defendant or respondent, on his appearance, $40;

(c) on the entry of judgment, from the prevailing party, $25;

(d) for preparing copies of papers on file in his office, 50 cents per page for the first five pages of each file, per request, and 25 cents per page thereafter;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or abstract of judgment from all other courts, $5;

(i) for issuing an execution or order of sale on a foreclosure of a lien, $2;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $50, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $35;

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(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (6), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the general fund of the county. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage, *$40* must be deposited in the state general fund, *$35 must be remitted to the state to be deposited as provided in 19-5-404,* $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the general fund of the county.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on his appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be *remitted to the state to be* deposited *as provided in 19-5-404.*"

Section 5. **Review of actuarial valuation.** The public employees retirement board shall provide to the 52nd legislature, by January 10, 1991, a copy of the most current actuarial valuation of the judges' retirement system. The legislature shall review the actuarial soundness of the judges' retirement system, and the 52nd legislature may eliminate or modify the effect of [this act].

Section 6. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

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Section 7. **Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1989.

(2) [Sections 2 and 3] are effective July 1, 1991.

Approved May 12, 1989.

# CHAPTER NO. 665

[SB 285]

AN ACT TO ALLOW PUBLIC CORPORATIONS OTHER THAN STATE AGENCIES TO ESTABLISH, SEPARATELY OR JOINTLY, A WORKERS' COMPENSATION SELF-INSURANCE FUND THROUGH THE ISSUANCE AND SALE OF BONDS AND NOTES; AMENDING SECTION 39-71-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-71-403, MCA, is amended to read:

**"39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations — financing of self-insurance fund.** (1) *If* a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3 *are* exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency *must* be considered to be ordinary and necessary expense of the agency. *The* agency shall make appropriation of and pay *the* sums into the state compensation insurance fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate *the* ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance *or issue bonds or notes pursuant to subsection (3)(b).* A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) *(a)* A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund, *including debt service on any bonds and notes issued pursuant to subsection (3)(b).*

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*(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 3% of the taxable valuation of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation to the contrary. The revenues derived from the sale of the bonds and notes may not be used for any other purpose.*

*(ii) The bonds and notes:*

*(A) may be sold at public or private sale;*

*(B) do not constitute debt within the meaning of any statutory debt limitation; and*

*(C) may contain other terms and provisions as the governing body determines.*

*(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.*

*(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the 3% of taxable valuation limitation in (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.*

(4) All money in the fund established under subsection (3)*(a)* not needed to meet immediate expenditures must be invested by the governing body of the public corporation *or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii)*, and all proceeds of the investment *must* be credited to the fund."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 12, 1989.

# CHAPTER NO. 666

[HB 566]

AN ACT AUTHORIZING A LOCAL GOVERNMENT TO EXEMPT A BUSINESS INCUBATOR OWNED BY A LOCAL ECONOMIC DEVELOPMENT CORPORATION FROM CERTAIN PROPERTY TAXES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** Unless the context requires otherwise, the following definitions apply to [section 2]:

(1) "Business incubator" means a facility in which space is leased to new small businesses and that provides shared services and business assistance to the new businesses in order to improve their chances of success. The services provided may include but are not limited to receptionist, copying, computer, telephone, secretarial, and meeting services. The assistance provided may include but is not limited to advice concerning marketing plans, business plans, accounting, and administration.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

Section 2. **Business incubator tax exemption — procedure.** (1) A business incubator owned and operated by a local economic development organization is eligible for an exemption from certain local property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall approve the tax exemption by resolution, after notice and hearing. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation as provided in Title 35, chapter 2 and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns and operates or will operate the business incubator.

(3) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. The exemption may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

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Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 and 2].

Approved May 12, 1989.

# CHAPTER NO. 667

[HB 595]

AN ACT REQUIRING THE DEPARTMENT OF HIGHWAYS TO ERECT AND THE MONTANA HISTORICAL SOCIETY TO FUND AND DESIGN INDIAN HISTORICAL MARKERS ALONG PRIMARY AND INTERSTATE HIGHWAYS; REQUIRING THE HISTORICAL SOCIETY TO CONSULT WITH INDIAN TRIBAL GOVERNMENTS IN MONTANA ON THE DESIGN AND GENERAL LOCATION OF THE MARKERS; AND PROVIDING A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Indian historical markers.** Subject to the provisions of federal law, the department shall erect at specified locations on the primary and interstate highways in Montana up to 25 markers that are clearly visible to traffic and that identify sites of significant events in the history of the Indian people of Montana.

Section 2. **Marker location and design — consultation with tribes required.** (1) The preservation review board established in 2-15-1512 shall consult with each of the seven tribal governments in Montana, the Little Shell band of Indians, and the coordinator of Indian affairs before designing the markers, writing the text, and designating the general locations for the markers. The department shall determine the exact location of each marker.

(2) A marker may not be erected if the tribal government and the review board do not agree on its design and text.

Section 3. **Historical society to pay cost of markers from allocation under lodging facility tax.** The Montana historical society shall pay the cost of manufacture and erection of markers provided for in [section 1] from funds available to the society under 15-65-121(1)(a) after June 30, 1991, and the society shall expend up to $10,000 each fiscal year for the purposes of [section 1].

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [sections 1 and 2].

Section 6. **Termination date.** [This act] terminates July 1, 1997.

Approved May 12, 1989.

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# CHAPTER NO. 668

[HB 757]

AN ACT TO ESTABLISH AN AGRICULTURAL CHEMICAL GROUND WATER PROTECTION PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; TO REQUIRE ESTABLISHMENT OF AGRICULTURAL CHEMICAL GROUND WATER QUALITY STANDARDS; TO PROVIDE FOR GROUND WATER MONITORING AND AGRICULTURAL CHEMICAL GROUND WATER MANAGEMENT PLANS; TO PROVIDE FOR ENFORCEMENT AUTHORITY, COMPLIANCE ORDERS, AND PENALTIES; TO DIRECT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO AMEND CERTAIN RULES IMPLEMENTING THE WATER QUALITY ACT; TO ESTABLISH ADDITIONAL FEES FOR REGISTRATION OF PESTICIDES AND FERTILIZERS; TO CREATE AGRICULTURAL CHEMICAL GROUND WATER PROTECTION ACCOUNTS; AMENDING SECTIONS 75-5-105, 75-5-301, 80-8-105, 80-8-107, AND 80-8-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

## STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of agriculture and the department of health and environmental sciences concerning the administration of the provisions of the bill and the adoption of rules.

Because the departments share responsibility for certain duties established by the bill, the departments shall coordinate their rulemaking efforts and whenever possible adopt identical rules for the areas of shared responsibility, including:

(1) ground water monitoring as authorized by [sections 10 and 11];

(2) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by [sections 7, 10, and 11];

(3) maintenance of confidentiality of certain data as required by [section 8]; and

(4) administrative civil penalties as authorized by [section 22].

The board of health and environmental sciences is responsible for adoption of certain ground water quality standards for agricultural chemicals as required by [section 9]. The board shall adopt appropriate rules as necessary to comply with the special requirements and considerations that apply to the adoption of these standards as specified in [section 9], including acquisition of current and scientifically valid data from the United States environmental protection agency (EPA) and other sources and communications with EPA concerning the content and status of promulgated federal standards, nonpromulgated federal standards, and other relevant EPA regulations and materials.

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The department of agriculture is responsible for the development of agricultural chemical ground water management plans. The department shall adopt appropriate rules to ensure compliance with the requirements of [section 12], including procedures for the development of the plans, communication with sources of information needed for the plans, communication with citizens who may be affected by the plans, and criteria for ensuring that the content of the plans meets the objectives of preventing ground water impairment, minimizing the presence of agricultural chemicals in ground water, and protecting present and future beneficial uses of ground water as specified in [section 12]. The department of agriculture shall also adopt rules specifying procedures for obtaining comments on agricultural chemical ground water management plans from the department of health and environmental sciences, for adoption of completed plans, and for making modifications to adopted plans.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 24] may be cited as the "Montana Agricultural Chemical Ground Water Protection Act".

Section 2. **Definitions.** Unless the context requires otherwise, in [sections 1 through 24] the following definitions apply:

(1) "Agricultural chemical" means any of the following:

(a) a pesticide as defined in 80-8-102;

(b) an isomer, degradation, or metabolic product of a pesticide; or

(c) a commercial fertilizer as defined in 80-10-101.

(2) "Aquifer" means a water-bearing, subsurface formation capable of yielding sufficient quantities of water to a well for a beneficial use.

(3) "Best management plans" and "best management practices" mean activities, procedures, and practices established by the department of agriculture, in consultation with the Montana state university extension service, to prevent or remedy the introduction of agricultural chemicals into ground water to the extent technically and economically practical.

(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(5) "Confirmatory procedure" means a process for verifying the detection of agricultural chemicals in water, soil, and other related media.

(6) "EPA" means the United States environmental protection agency.

(7) "Ground water" means any water of the state occupying the voids within a geologic formation and within the zone of saturation.

(8) "Interim numerical standard" means a health-based number that expresses the concentration of an agricultural chemical allowed in ground water and that is adopted by a rule of the board pursuant to [section 9(3) or (4)].

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(9) "Margin of safety" means numerical margins that are applied to the no observable effect level in an agricultural chemical toxicology study and that are used by the EPA to extrapolate data obtained from studies of animals to humans, including sensitive individuals.

(10) "No observable effect level" means the highest dose level of an agricultural chemical to which a laboratory animal is exposed, per unit of body weight, at which no effect is observed, as established by EPA's pesticide registration process.

(11) "Nonpoint source" means a diffuse source of agricultural chemicals resulting from activities of man over a relatively large area, the effects of which must normally be addressed or controlled by a management or conservation practice.

(12) "Nonpromulgated federal standard" means a health advisory or a suggested no adverse response level that is published but not promulgated by regulation by EPA and that is a suggested measure of the health risk represented by the concentration of an agricultural chemical in water.

(13) "Numerical risk assessment" means a scientific procedure used to measure the statistical probability of human health risk associated with exposure to an agricultural chemical.

(14) "Oncogenic potential" means the potential of an agricultural chemical to cause tumors in laboratory animals and the extrapolation of that potential to humans through use of statistical models and other evidence.

(15) "Person" means any individual, group, firm, cooperative, corporation, association, partnership, political subdivision, state or federal government agency, or other organization or entity.

(16) "Point of standards application" means the specific location in an aquifer where ground water quality and quantity are sampled, measured, evaluated, or otherwise used by either the department or the department of health and environmental sciences to implement the provisions of [sections 1 through 24].

(17) "Point source" means a point source as defined in 75-5-103, including but not limited to chemical mixing, loading, and storage sites and sites of agricultural chemical spills.

(18) "Promulgated federal standard" means an agricultural chemical maximum contaminant level as established under the federal Safe Drinking Water Act, a national primary drinking water standard, or an interim drinking water regulation or other EPA regulation based on federal law.

(19) "Registrant" means a person as defined in 80-8-102 and 80-10-101.

(20) "Standard" means the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by a rule of the board as required by [section 9].

(21) "Use" means any act of handling or release of an agricultural chemical or exposure of man or the environment to an agricultural chemical,

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including but not limited to application, mixing, loading, storage, disposal, or transportation.

Section 3. **Policy.** It is the public policy of this state to:

(1) protect ground water and the environment from impairment or degradation due to the use of agricultural chemicals;

(2) allow for the proper and correct use of agricultural chemicals;

(3) provide for the management of agricultural chemicals to prevent, minimize, and mitigate their presence in ground water; and

(4) provide for education and training of agricultural chemical applicators and the general public on ground water protection, agricultural chemical use, and the use of alternative agricultural methods.

Section 4. **Administration.** (1) The department and the department of health and environmental sciences shall administer [sections 1 through 24].

(2) The department of health and environmental sciences is responsible for the establishment and enforcement of agricultural chemical ground water standards and interim numerical standards as authorized by [section 9], ground water monitoring as authorized by [sections 10 and 11], providing comments to the department during the development of agricultural chemical ground water management plans, promoting research as set forth in [section 7], and related responsibilities set forth in Title 75, chapter 5.

(3) The department is responsible for the preparation, implementation, and enforcement of agricultural chemical ground water management plans as authorized by [sections 12 and 16 through 24], public education as authorized by [section 6], ground water monitoring as authorized by [sections 10 and 11], other duties related to promoting research as set forth in [section 7], and related responsibilities set forth in Title 80, chapters 8 and 10.

(4) [Sections 1 through 24] do not limit the department's responsibility to enforce agricultural chemical label directions and prohibitions.

(5) The administration of [sections 1 through 24], including rulemaking and hearing functions authorized by [sections 1 through 24], must be conducted in accordance with the Montana Administrative Procedure Act, Title 2, chapter 4.

Section 5. **Rulemaking.** (1) The board shall adopt rules for the administration of [sections 1 through 24] for which the board and the department of health and environmental sciences have responsibility. These rules must include but are not limited to:

(a) standards and interim numerical standards for agricultural chemicals in ground water as authorized by [section 9];

(b) procedures for ground water monitoring as authorized by [sections 10 and 11];

(c) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by [sections 7, 10, and 11],

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which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(d) standards for maintaining the confidentiality of data and information declared confidential by EPA and the confidentiality of chemical registrant data and information protected from disclosure by federal or state law as required by [section 8]; and

(e) administrative civil penalties as authorized by [section 22].

(2) The department shall adopt rules necessary to carry out its responsibilities under [sections 1 through 24]. These rules must include but are not limited to:

(a) procedures for ground water monitoring as authorized by [sections 10 and 11];

(b) the content and procedures for development of agricultural chemical ground water management plans, including the content of best management practices and best management plans, procedures for obtaining comments from the department of health and environmental sciences on the plans, and the adoption of completed plans and plan modifications as authorized by [section 12];

(c) standards for maintaining the confidentiality of data and information declared confidential by EPA and of chemical registrant data and information protected from disclosure by federal or state law as required by [section 8];

(d) field and laboratory operational quality assurance, quality control, and confirmatory procedures as authorized by [sections 7, 10, and 11], which may include, through adoption by reference, procedures that have been established or approved by EPA for quality assurance and quality control;

(e) emergency procedures as authorized by [section 20];

(f) procedures for issuance of compliance orders as authorized by [section 18]; and

(g) procedures for the assessment of administrative civil penalties as authorized by [section 22].

Section 6. **Educational programs.** (1) The department, in cooperation with the Montana state university extension service, shall develop and conduct appropriate educational programs to promote the policy specified in [section 3]. The department and the Montana state university extension service may charge a fee for the educational programs commensurate with the costs of program development and administration.

(2) All fees collected by the department pursuant to this section must be deposited in the state special revenue fund. The [illegible]ment may spend the funds for the purposes set forth in this section.

(3) All fees collected by the Montana state university extension service must be deposited in a special account identified for this purpose. The

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extension service may spend the funds for the purposes set forth in this section.

Section 7. **Research.** The department or the department of health and environmental sciences shall promote, for the purposes described in [section 3], cooperative ground water research programs with units of the university system and associated agricultural experiment stations, the bureau of mines and geology, and other appropriate agencies, organizations, and individuals.

Section 8. **Confidentiality.** (1) The department and the department of health and environmental sciences shall maintain the confidentiality of data declared confidential by EPA and chemical registrant data and information protected from disclosure by federal or state law.

(2) The department of health and environmental sciences shall comply with the requirements of 75-5-105 and the department shall comply with the requirements of 80-8-107 and 80-10-210, except as otherwise provided by this section.

Section 9. **Ground water standards.** (1) The board shall adopt standards and, as applicable, interim numerical standards for agricultural chemicals in ground water. The standards must be the same as any promulgated or nonpromulgated federal standard established by EPA, although the board may determine, pursuant to the requirements of subsection (4), that an interim numerical standard different from either a promulgated or nonpromulgated federal standard is justified. Promulgated federal standards must receive preference. Except as provided in subsections (3) and (4), if more than one nonpromulgated federal standard exists for an agricultural chemical, the board must adopt the most recently established nonpromulgated federal standard.

(2) The board is not required to adopt a standard or interim numerical standard for every agricultural chemical registered in the state. The only standards and interim numerical standards required are for those agricultural chemicals:

(a) that are addressed by promulgated and nonpromulgated federal standards;

(b) the presence of which has been verified in ground water as provided in [section 10]; or

(c) that the department and the department of health and environmental sciences predict may appear in ground water, in accordance with the procedures and determinations specified in [sections 10 and 11].

(3) If no promulgated federal standard has been adopted or no nonpromulgated federal standard has been published for an agricultural chemical for which the board is required to establish a standard or interim numerical standard as specified in subsections (2)(b) and (2)(c), the department of health and environmental sciences shall request EPA to establish a promulgated or nonpromulgated federal standard. If the department of health and environmental sciences determines that EPA cannot comply with the request within 15 days, the board shall adopt an interim numerical

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standard, provided that the board shall review the interim numerical standard whenever EPA adopts a promulgated federal standard or publishes a nonpromulgated federal standard for the agricultural chemical in question.

(4) The board may adopt an interim numerical standard that is different from either a promulgated or nonpromulgated federal standard, if there is significant new and relevant technical information available that is scientifically valid. The board shall review the interim numerical standard when EPA establishes or revises the promulgated or nonpromulgated federal standard for the agricultural chemical in question.

(5) The board shall consider the following in adopting any interim numerical standard under either subsection (3) or (4):

(a) effects on a person weighing 70 kilograms and drinking 2 liters of water per day over a lifetime; and

(b) EPA's conclusions regarding the no observable effect level, including the margin of safety identified by EPA when scientific data indicates oncogenic potential for the agricultural chemical and EPA has determined that a numerical risk assessment is not justified, is inappropriate, or does not serve as the primary toxicological basis for regulation.

(6) Nothing in this section may interfere with the board's responsibility to adopt rules and standards under Title 75, chapter 6.

Section 10. **Monitoring programs.** (1) The department or the department of health and environmental sciences shall conduct monitoring programs to determine:

(a) whether residues of agricultural chemicals are present in ground water; and

(b) the likelihood of an agricultural chemical to enter ground water, if either department determines that sufficient valid scientific data is available to reasonably predict the behavior of a particular agricultural chemical in the soil.

(2) Any person who receives a chemical analysis indicating the presence of an agricultural chemical in ground water shall notify the department of health and environmental sciences.

(3) The department and the department of health and environmental sciences shall evaluate all information relating to this section that is received from any person based upon standard procedures, protocols, and confirmatory procedures established by rules. Information found to be insufficient based on the adopted procedures and protocols, including analytical results, may be used only for informational purposes.

Section 11. **Evaluation and use of monitoring results.** (1) When providing preliminary monitoring results or confirmed monitoring results to ground water users or the public, the departments shall also provide any applicable standard or interim numerical standard.

(2) When monitoring results reveal the presence of an agricultural chemical in ground water:

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(a) the department of health and environmental sciences is the lead department for determining health risks; and

(b) the department is the lead department for determining compliance with agricultural chemical ground water management plans authorized by [section 12] and with agricultural chemical registration, use, and labeling requirements and conditions pursuant to Title 80, chapters 8 and 10.

(3) The department and the department of health and environmental sciences shall cooperatively evaluate the results of monitoring programs authorized by [section 10].

(4) Based on the results of monitoring, the department and the department of health and environmental sciences shall implement appropriate actions specified in [sections 1 through 24] to mitigate any existing impacts of an agricultural chemical found in ground water and to prevent future impacts of an agricultural chemical that may be found in ground water, in relation to human health, agriculture, and the environment.

(5) The department may not undertake compliance and enforcement actions authorized by [sections 1 through 24] and the department of health and environmental sciences may not undertake compliance and enforcement actions authorized by Title 75, chapter 5, unless there is sufficient evidence collected through:

(a) monitoring at a point of standards application that reveals that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of [section 17] or Title 75, chapter 5; or

(b) other investigations that reveal that a person using an agricultural chemical or introducing or discharging the chemical into ground water has violated a provision of [section 17] or Title 75, chapter 5; or

(c) monitoring that reveals a significant probability for an agricultural chemical to enter ground water.

Section 12. **Agricultural chemical ground water management plans.** (1) The department shall develop and implement a general state agricultural chemical ground water management plan to achieve the policies of [section 3]. This plan must include general program elements set forth in [sections 1 through 24] and best management plans and best management practices. Prior to publication of the plan, the department shall provide a 30-day period for the department of health and environmental sciences to prepare and submit comments on the plan.

(2) Except as provided in subsection (11), the department shall develop and implement agricultural chemical ground water management plans specific to particular agricultural chemicals and to a defined geographical area:

(a) when the level of an agricultural chemical found in ground water is at 50% of the standard or interim numerical standard at a point of standards application and is scientifically validated;

(b) when a definite trend of increased presence of the agricultural chemical in ground water at a point of standards application is scientifically validated;

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(c) when agricultural chemicals have been determined to have migrated in the ground water from the point of detection;

(d) when EPA proposes to suspend or cancel registration of an agricultural chemical, prohibits or restricts the chemical's sale or use in the state, or otherwise initiates action against a chemical because of ground water concerns and when EPA's action, restriction, or prohibition will be implemented unless the state develops an adequate management plan; or

(e) when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment.

(3) Any person using an agricultural chemical that is addressed by a specific agricultural chemical ground water management plan in the geographical region that is addressed by the plan shall comply with the plan. The department may specifically identify and designate persons who are under the plan and may inform any person about the plan.

(4) The department shall prioritize preparation of specific agricultural chemical ground water management plans in consideration of the specific circumstances of each area and within available resources.

(5) In developing general and specific agricultural chemical ground water management plans, the department shall consider the current and potential beneficial use of the ground water included in or affected by the plans. If the ground water has not been classified, the department shall consider it to be included in the classification representing the highest quality of ground water until such time as the ground water is classified by the department of health and environmental sciences, and the department may proceed to develop an agricultural chemical ground water management plan as required by subsection (2).

(6) The department may request the department of health and environmental sciences to classify certain ground water and may collect the data and information required by the department of health and environmental sciences to classify the ground water. If adequate technical data and financial resources are available as determined by the department of health and environmental sciences, the department of health and environmental sciences shall classify ground water at locations as requested by the department.

(7) A specific agricultural chemical ground water management plan must include:

(a) requirements to prevent ground water impairment that are based on ground water use, value, and vulnerability and that address all applicable aspects of agricultural chemical use; and

(b) requirements to prevent or minimize further presence of the agricultural chemical in the ground water and to provide protection for the present and future beneficial use of the ground water.

(8) A specific agricultural chemical ground water management plan may include but is not limited to the following elements:

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(a) identification of geographical areas where an agricultural chemical may be used;

(b) ground water, soil, meteorological, and geological characteristics;

(c) best management plans and best management practices;

(d) identification of high priority ground water;

(e) certification, licensing, training, and education requirements for persons using agricultural chemicals;

(f) identification of setback areas around water wells where certain activities may be restricted;

(g) agricultural chemical application rates and timing and related use criteria;

(h) alternative pest management techniques, including integrated pest management;

(i) other requirements for pesticides, as set forth in Title 80, chapter 8, and related rules and for fertilizers, as set forth in Title 80, chapter 10, and related rules;

(j) EPA requirements; and

(k) alternative soil fertility practices.

(9) When developing and implementing a specific agricultural chemical ground water management plan, the department shall consider the benefits of appropriate use of the agricultural chemical and shall consult with the Montana state university extension service.

(10) Within available resources, the department shall contact users of an agricultural chemical and user groups that will be subject to a general or specific agricultural chemical ground water management plan to request their recommendations concerning the development of the plan.

(11) The department may develop and implement a commercial fertilizer ground water management plan if the department and the department of health and environmental sciences determine that residues from commercial fertilizer are present in the ground water or when EPA implements a program to protect ground water from fertilizers.

(12) The department shall adopt specific agricultural chemical ground water management plans through rulemaking, provided that the department may implement emergency plans as set forth in 80-8-105(4) or as authorized by the Montana Administrative Procedure Act. Prior to rulemaking, the department shall provide to the department of health and environmental sciences a copy of each proposed specific agricultural chemical ground water management plan. A 30-day period must be provided for the department of health and environmental sciences to prepare comments on the plan.

(13) The department shall review agricultural chemical ground water management plans periodically to determine if the requirements contained

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in the plans need to be modified based on new scientific data and information. Plan modifications must be accomplished by rulemaking.

(14) A person who sells agricultural land that is subject to the provisions of a specific agricultural chemical ground water management plan shall provide the buyer with written notice about his obligations under the plan and shall forward a copy of the notice to the department. The department is not responsible for enforcement of this subsection.

Section 13. **Department of health and environmental sciences to amend rules.** The department of health and environmental sciences shall amend Rules 16.20.603, 16.20.1003, 16.20.1011, and 16.20.1012, Administrative Rules of Montana, to define a specific agricultural chemical ground water management plan prepared pursuant to [section 12] as reasonable land, soil, and water conservation practices for point and nonpoint source agricultural operations involving the use of agricultural chemicals and to exclude those agricultural operations from Montana ground water pollution control system permit requirements.

Section 14. **Agricultural chemical ground water protection accounts — acceptance and expenditure of gifts, grants, and funds.** (1) There is a department of agriculture agricultural chemical ground water protection special revenue account and a department of health and environmental sciences agricultural chemical ground water protection special revenue account within the state special revenue fund established by 17-2-102.

(2) Both accounts named in subsection (1) may receive funds from any source as gifts, grants, cost-share funds, or other funds designated for agricultural chemical ground water protection purposes.

(3) The department and the department of health and environmental sciences may individually or jointly spend funds received by their respective accounts for the purposes authorized by [sections 1 through 24].

Section 15. **Special funding.** (1) A fee of $15 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201(4).

(2) A fee of $10 is assessed for the registration of fertilizers in addition to the fee imposed by 80-10-201(1). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer account within the state special revenue fund for the administration of [sections 1 through 24].

Section 16. **Authority to investigate and inspect.** Authorized representatives of the department, consistent with the responsibilities set forth in [sections 1 through 24] and upon presentation of department-issued credentials, may at reasonable times or under emergency conditions enter upon any public or private property to:

(1) investigate conditions relating to compliance with agricultural chemical labels, agricultural chemical ground water management plans, monitoring requirements, or ground water protection requirements and to investigate violations of plans or compliance orders;

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(2) gain access to and copy any records required by the department in the administration of [sections 1 through 24];

(3) establish and inspect monitoring equipment; and

(4) sample ground water, including drinking water supply sources such as wells and similar structures.

Section 17. **Prohibited activity.** It is unlawful for a person to:

(1) violate any provision of a specific agricultural chemical ground water management plan;

(2) violate any lawful order issued pursuant to [sections 1 through 24]; or

(3) violate any provision of [sections 1 through 24].

Section 18. **Compliance orders.** (1) In furtherance of [section 17], the department may issue a compliance order to any person violating a standard, an interim numerical standard, or any other requirement established pursuant to [sections 1 through 24]. The department shall coordinate its proposed actions pursuant to this section with proposed actions of the department of health and environmental sciences pursuant to 75-5-613, if any. Issuance of a compliance order under [sections 1 through 24] precludes the department from taking other enforcement actions for the same violation under Title 80, chapter 8 or 10.

(2) The department may issue a compliance order to any person, including the person's employees, agents, and subcontractors, whether or not the person is subject to a specific management plan, to require the cleanup of any agricultural chemical that the person has accidentally or purposely dumped, spilled, or misused or unlawfully used that has a significant probability of entering ground water.

(3) When issuing a compliance order, the department may require a person who has violated a provision of [section 17] to conduct monitoring to assist in determining the presence or level of concentration of an agricultural chemical in ground water and the effectiveness of cleanup efforts. The department shall specify criteria in the compliance order for determining the duration of monitoring.

(4) A compliance order must specify the requirement violated and must set a time for compliance. In establishing a time for compliance, the department shall take into account the seriousness of the violation and any good-faith efforts that the person has made to comply with the requirement that has been violated. A compliance order issued under this section must be served either personally by a person qualified to perform service under the Montana Rules of Civil Procedure or by certified mail.

Section 19. **Injunctions authorized.** The department may commence a civil action seeking appropriate relief, including a permanent or temporary injunction, pursuant to 80-8-306 or 80-10-303, as applicable, for a violation that is subject to a compliance order under [section 18].

Section 20. **Emergencies.** Notwithstanding any other provisions of [sections 1 through 24], if the department finds that an emergency exists

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that requires immediate action to protect ground water from agricultural chemicals or to prevent use of ground water impaired or likely to be impaired by agricultural chemicals, the department may, without notice or hearing, issue necessary orders or adopt rules to protect public health, welfare, and safety. The duration of an emergency order or rule is limited to the emergency provisions of the Montana Administrative Procedure Act as specified in 2-4-303.

Section 21. **Violators subject to penalties.** (1) A person found to be in violation of [sections 1 through 24] or a rule established pursuant to [sections 1 through 24] is subject to the penalty provisions of [sections 22 through 24].

(2) For the purpose of this section, the term "person" means, in addition to the definition in [section 2], any responsible corporate officer.

(3) Nothing in [sections 1 through 24] may be construed as requiring the department or an authorized agent of the department to report minor violations of [sections 1 through 24] for prosecution when the department or a duly authorized agent believes that the public interest will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.

(4) Action under [sections 22 through 24] does not bar the department from enforcement of [sections 1 through 24] or of rules or orders issued under [sections 1 through 24] by injunction or other appropriate remedy.

(5) The department and the department of health and environmental sciences shall coordinate actions when a violator is subject to the penalties authorized by [sections 22 through 24] and penalties authorized by Title 75, chapter 5, for the same violation.

Section 22. **Administrative civil penalty.** (1) A person who commits a violation of [sections 1 through 24] may be assessed an administrative civil penalty by either the department or the department of health and environmental sciences, consistent with their respective responsibilities, of not more than $1,000 for each offense. Farm applicators possessing a pesticide permit or using a fertilizer may not be assessed an administrative civil penalty of more than $500 for the first offense. Assessment of a civil penalty may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through 24] or Title 75, chapter 5, that is issued or undertaken by either the department or the department of health and environmental sciences.

(2) No administrative civil penalty may be assessed unless the person charged is given notice and opportunity for a hearing pursuant to Title 2, chapter 4, part 6, of the Montana Administrative Procedure Act.

(3) In determining an appropriate administrative civil penalty, the responsible department shall consider the effect on the person's ability to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender, and whether significant harm resulted to public health, agricultural crops, livestock, or the environment.

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(4) If the responsible department is unable to collect the administrative civil penalty or if a person fails to pay all or a set portion of the administrative civil penalty as determined by the responsible department, the department may seek to recover the amount in the appropriate district court.

(5) A person against whom the department or the department of health and environmental sciences has assessed an administrative civil penalty may, within 30 days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. A jury trial must be granted when demanded under Rule 38 of the Montana Rules of Civil Procedure.

Section 23. **Judicial civil penalty.** A person who commits a violation as specified in [section 17] shall be subject to a judicial civil penalty not to exceed $10,000. Each occurrence constitutes a separate violation.

Section 24. **Criminal penalties.** (1) A person who intentionally commits a violation as specified in [section 17] is guilty of an offense and subject to a fine not to exceed $25,000 for each day the violation continues or imprisonment for not more than 1 year, or both. Following an initial conviction under this section, a subsequent conviction subjects a person to a fine of not more than $50,000 for each day the violation continues or imprisonment for not more than 2 years, or both.

(2) Except as otherwise provided in [sections 1 through 24], a person convicted of violating any of the provisions of [sections 1 through 24] or rules issued under [sections 1 through 24] or who misrepresents, impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the department from performance of its duties in connection with the provisions of [sections 1 through 24] is guilty of a misdemeanor and shall be fined not less than $100 but not more than $1,500.

(3) A person who knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under [sections 1 through 24] or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under [sections 1 through 24] shall, upon conviction, be punished by a fine of not more than $5,000 or by imprisonment for not more than 6 months, or both.

(4) A person who with intent to defraud uses or reveals confidential information and data provided under [sections 1 through 24] or rules issued under [sections 1 through 24] shall, upon conviction, be fined not more than $5,000 or imprisoned for not more than 1 year, or both.

Section 25. Section 75-5-105, MCA, is amended to read:

**"75-5-105. Confidentiality of records.** *Except as provided in [section 8], any* information concerning sources of pollution which is furnished to the board or department or which is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution which would, if disclosed, reveal methods or processes entitled to protection as trade secrets shall be maintained as confidential if so determined by a court of

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competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if he wishes such information to enjoy confidential status. The department shall be served in any such action and may intervene as a party therein. Any information not intended to be public when submitted to the board or department shall be submitted in writing and clearly marked as confidential. The data describing physical and chemical characteristics of a waste discharged to state waters shall not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if such analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information which is otherwise made confidential by this section."

Section 26. Section 75-5-301, MCA, is amended to read:

**"75-5-301. Classification and standards for state waters.** *Consistent with the provisions of [section 9], the* board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification."

Section 27. Section 80-8-105, MCA, is amended to read:

**"80-8-105. Rules.** (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to man;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

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(g) operating and maintaining equipment used by applicators;

(h) developing examinations which shall be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed $5 per type of device, specifying classes of devices to be registered and providing for additional requirements;

(o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including requalification training;

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306; and

(q) establishing fees for training courses and materials.

(3) (a) *Consistent with the provisions of [sections 1 through 24], whenever* the department finds that those rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and shall encompass all reasonable factors which the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

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(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 shall be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department shall be in writing, shall be entered in full in books to be kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department shall include and be based upon written findings of fact. A copy of any rule or order certified by the department shall be received in evidence in all courts of this state with the same effect as the original."

Section 28. Section 80-8-107, MCA, is amended to read:

**"80-8-107. Public information.** *Except as provided in [sections 1 through 24], the* department as it deems proper may, alone or in cooperation with other state or federal agencies, publish information regarding aspects of the use and application sections or registration sections of this chapter. This information cannot disclose operations of selling, production, or use of pesticides by any person."

Section 29. Section 80-8-305, MCA, is amended to read:

**"80-8-305. General violations.** (1) *Consistent with the provisions of [sections 1 through 24], it* is unlawful for any person:

(a) to discard any pesticide or pesticide container in such a manner as to cause injury to humans, domestic animals, or wildlife, or to pollute any waterway in a way harmful to any wildlife therein or to the environment;

(b) to handle, transport, store, display, or distribute pesticides or pesticide containers in such a manner as to endanger man or the environment or to endanger food or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(c) to handle, apply, or attempt to apply any registered pesticide for which he does not have an appropriate, complete, or legible label at hand; or

(d) to apply or attempt to apply any registered pesticide in a manner inconsistent with the label, as defined in 80-8-102.

(2) It is unlawful for any person to manufacture, formulate, or store any registered pesticide or component or byproduct thereof in such a manner

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that the pesticide or any component or byproduct cannot be contained or confined within the boundaries of the lands owned by or under the appropriate control of the person involved. Odor is specifically exempted from the provisions of this subsection."

Section 30. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 31. **Codification instruction.** [Sections 1 through 24] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 through 24].

Section 32. **Effective date.** [This act] is effective January 1, 1990.

Approved May 12, 1989.

# CHAPTER NO. 669

[HB 614]

AN ACT ESTABLISHING A PROGRAM TO PROVIDE SPECIALIZED TELECOMMUNICATIONS EQUIPMENT AND SERVICES TO THE HANDICAPPED; PROVIDING FOR A STATEWIDE DUAL-PARTY RELAY SYSTEM TO CONNECT PERSONS WHO ARE HANDICAPPED WITH ALL PHASES OF PUBLIC TELECOMMUNICATIONS SERVICE; ESTABLISHING A COMMITTEE THAT INCLUDES MEMBERS OF GOVERNMENT, BUSINESS, REGULATED TELECOMMUNICATIONS SERVICES, AND THE HANDICAPPED TO OVERSEE ADMINISTRATION OF THE PROGRAM; AUTHORIZING A 10-CENT MONTHLY CHARGE ON TELEPHONE CUSTOMERS TO FINANCE THE PROGRAM; APPROPRIATING FUNDS; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it requires the committee on telecommunications services for the handicapped to adopt rules to administer and fund a program to provide specialized telecommunications equipment and services to persons who are handicapped.

It is the intent of the legislature that the committee adopt rules, in accordance with [section 8], as may be necessary to administer the program. Rules adopted by the committee may address matters such as:

(1) eligibility for participation in the program;

(2) the types of equipment and services to be provided under the program;

(3) the conditions and terms for the loan or lease of specialized telecommunications equipment to eligible participants in the program;

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(4) requirements governing the purchase or lease of specialized telecommunications equipment from qualified wholesale manufacturers; and

(5) the definition of terms used in the bill.

In addition, the legislature intends that the program be self-supporting and be funded by a 10-cent monthly charge on telephone customers provided for in [section 12].

In adopting rules, the committee should consider the success of programs in other states that provide specialized telecommunications equipment and services to the handicapped, including programs established in Oregon and Idaho.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Legislative findings and declaration.** (1) The legislature finds and declares that many Montana citizens are physically handicapped and are unable to use traditional telecommunications equipment and services without assistance. These citizens constitute a substantial and valuable resource within the United States and the state of Montana, and this segment of our population needs access to telecommunications services in order to function as contributing and productive members of our society.

(2) The legislature further finds and declares that the role of telecommunications in our world today is inestimable. Telecommunications is the primary vehicle of commerce and industry, the means to convey and receive information and knowledge, and the way we connect with others on a personal as well as business level. Telecommunications gives people independence and self-sufficiency, and it provides goods and services, human contact, and fellowship.

(3) The legislature further finds that access to telecommunications services should be provided to persons who are handicapped not only for their own sake but for the benefit of society at large. Access to telecommunications services would enhance the business and personal lives of handicapped persons, and its availability to the handicapped would be an investment of benefit to all of Montana.

(4) Consistent with the findings stated in subsections (1) through (3), the legislature finds it appropriate to provide handicapped persons access to telecommunications services by creating a program to make specialized telecommunications equipment and services available to the handicapped.

Section 2. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the committee on telecommunications services for the handicapped established in [section 3].

(2) "Dual-party relay system" means a service that permits full and simultaneous communication between those using telecommunications devices for the deaf (TDD) and those using conventional telephone equipment.

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(3) "Handicapped" means the condition of a person who is blind, deaf, hard-of-hearing, or speech-impaired.

(4) "Local exchange company" means a telecommunications company that provides telephone access lines to members of the general public who are its customers.

(5) "Program" means the program established in [section 7].

(6) "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person who is handicapped to communicate with others by means of the conventional telephone network. The term includes but is not limited to telecommunications devices for the deaf (TDD), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, and telebraille.

(7) "Telephone access line" means the telephone exchange access line or channel that provides access from the premises of a customer of a local exchange company to the telecommunications network to effect the transfer of information.

Section 3. **Committee on telecommunications services for the handicapped — composition — allocation.** (1) There is a committee on telecommunications services for the handicapped.

(2) The committee consists of 11 members appointed by the governor as follows:

(a) four members who are handicapped, two of whom must be deaf or hard-of-hearing;

(b) two members who are not handicapped, one of whom must be engaged in a business other than a business in the telecommunications industry and one of whom must be a senior citizen;

(c) one member from the department of social and rehabilitation services;

(d) one member from the largest local exchange company in Montana;

(e) one member from an independent local exchange company;

(f) one member from an interLATA interexchange carrier; and

(g) one member from the public service commission.

(3) The committee is allocated to the department of social and rehabilitation services for administrative purposes only as provided in 2-15-121.

Section 4. **Term of office — vacancies.** (1) Each member of the committee shall serve for a term of 3 years, except that the governor shall appoint four of the initial members to serve terms of 1 year and four of the initial members to serve terms of 2 years.

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

Section 5. **Officers — meetings — quorum — compensation.** (1) The committee shall choose a chairman from its members.

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(2) The committee shall meet at least once every 3 months and at such other times as determined by the chairman or by a majority of the committee.

(3) Six members of the committee constitute a quorum for the transaction of business.

(4) All members of the committee are entitled to reimbursement of expenses as provided in 2-18-501 through 2-18-503. Members of the committee who are not state employees are also entitled to receive compensation of $50 for each day they are engaged in official business of the committee.

Section 6. **Power and duties.** The committee shall oversee administration of the program provided for in [section 7]. In fulfilling this duty, the committee shall:

(1) establish policies and procedures governing administration of the program;

(2) analyze and approve a budget for administration of services under the program;

(3) monitor the expenditure of funds for the program;

(4) provide for administration of eligibility and the delivery of services for the program as provided for in [sections 7, 8, 9, and 10]; and

(5) perform any other duties necessary to properly oversee administration of the program.

Section 7. **Program established — purpose.** (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons who are handicapped.

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons who are handicapped; and

(b) provide a dual-party relay system to connect persons who are handicapped with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101.

Section 8. **Provision of services.** In administering the program established in [section 7], the committee shall:

(1) develop an appropriate means test to determine eligibility for participation in the program;

(2) require that participants in the program be residents of Montana and that residency be maintained as a condition of eligibility for continued participation in the program;

(3) require that participants provide satisfactory evidence that they are handicapped and would benefit from the use of specialized telecommunications equipment;

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(4) provide specialized telecommunications equipment to participants on the basis of a loan or lease arrangement that may include cost-sharing between the handicapped person and his employer;

(5) determine the type of specialized telecommunications equipment it considers necessary and economically feasible for use by Montana's handicapped;

(6) purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

(7) require, as a condition of each equipment purchase or lease, that the original manufacturer provide repair and maintenance service for new and returned equipment;

(8) maintain records of each item of equipment, including the location, serial number, and telephone number of each device;

(9) require an appropriate security deposit for equipment at the time of delivery, which deposit must be refunded without interest when the equipment is returned;

(10) make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

(11) provide a dual-party relay system that, if feasible, would be available statewide for operation 7 days a week, 24 hours a day, including holidays;

(12) implement the service described in subsection (11) within 2 years following [the effective date of this act]; and

(13) adopt rules necessary to administer the program.

Section 9. **Dual-party relay system — requirements.** The committee shall contract with a qualified provider to design and implement a dual-party relay system that fulfills the purpose described in [section 7]. The committee shall require, under the terms of the contract, that:

(1) the system relay all messages promptly and accurately;

(2) the system maintain the privacy of persons using the system; and

(3) the provider preserve the confidentiality of all telephone communications, except in instances in which such confidentiality would further a violation of the law.

Section 10. **Gifts and grants.** The committee may accept contributions, gifts, and grants, in money or otherwise, to the program established in [section 7]. Monetary contributions, gifts, and grants must be deposited in the fund provided for in [section 11].

Section 11. **Fund for telecommunications services for the handicapped.** (1) There is an account for telecommunications services for the handicapped in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in [section 10]; and

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(b) all charges billed and collected pursuant to [section 12].

(2) The money in the account is allocated to the committee for purposes of implementing [this act].

(3) All expenditures of the committee in administering [this act] must be paid from money deposited in the account.

Section 12. **Special assessment.** (1) A charge of 10 cents a month may be assessed on each telephone access line provided and billed by each local exchange company and is imposed for the purposes of [this act].

(2) Each customer of a local exchange company is liable for payment to the local exchange company of any charge properly imposed pursuant to [this act]. The local exchange company is not liable for any uncollected charge, nor does the company have an obligation to take legal action to enforce the collection of any charge that is unpaid by its customers.

(3) Each local exchange company shall bill each customer for the charge provided for in subsection (1). Except as provided in subsection (4), all charges billed and collected by a local exchange company must be transmitted to the state treasurer no later than the last day of the month following the end of each calendar quarter in which the charge is billed. All charges received by the state treasurer must be deposited in the fund established in [section 11] to the credit of the committee.

(4) Each local exchange company may deduct and retain ¾ of 1% of the total charges billed and collected each month to cover its administrative expenses in complying with the requirements of subsection (3).

Section 13. **Records — audit.** (1) Each local exchange company shall maintain a record of the charges billed and the charges collected pursuant to [section 12] for a period of 1 year from the date of billing or collection, respectively.

(2) The committee may require an audit of each local exchange company's records to assure proper accounting of all charges billed and collected pursuant to [section 12]. The audit must be conducted at the expense of the committee.

Section 14. **Appropriation.** The following money is appropriated from the account established in [section 11] to the committee on telecommunications services for the handicapped for the purpose of administering [this act]:

| FY 90 | FY 91 |
|---|---|
| $277,831 | $477,475 |

Section 15. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 2, chapter 15, part 22, and the provisions of Title 2, chapter 15, part 22, apply to [section 3].

Section 16. **Effective date.** [This act] is effective July 1, 1989.

Approved May 15, 1989.

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# CHAPTER NO. 670

[HB 193]

AN ACT PROVIDING FOR STATE AID TO PUBLIC LIBRARIES; PROVIDING FOR A DISTRIBUTION OF GRANTS TO PUBLIC LIBRARIES BY THE STATE LIBRARY COMMISSION ON A PER CAPITA AND PER SQUARE MILE BASIS; PROVIDING FOR REIMBURSEMENT FOR INTERLIBRARY LOAN LENDING; PROVIDING THAT SUCH AID MAY NOT BE USED TO SUPPLANT LOCAL OPERATING SUPPORT OF LIBRARIES; PROVIDING FOR BASE GRANTS TO LOCAL LIBRARIES FOR SUPPORT OF COOPERATIVE SERVICES THROUGH FEDERATIONS; PROVIDING FOR A STATE MULTILIBRARY CARD; PROVIDING AN APPROPRIATION; AMENDING SECTION 22-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

This bill requires a statement of intent because [section 6] provides for rulemaking by the state library commission. The legislature intends that the rules should include criteria and procedures for:

(1) granting or withholding funds to individual libraries;

(2) developing a state multilibrary card program;

(3) approving or denying requests for state multilibrary cards;

(4) governing the usage of multilibrary cards;

(5) reimbursing individual libraries for participation in interlibrary loan programs; and

(6) generally administering the funds appropriated for this program.

It is the legislature's intent that the rules permit local libraries to broaden their services to meet the needs of their communities, allow greater access to libraries by Montana's citizens, and encourage libraries to use the interlibrary loan program.

It is not the intent of the legislature that this bill allow local governments to decrease their support for public libraries in anticipation of state funding.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Information Access Montana Act".

Section 2. **State aid to public libraries.** (1) As provided in [sections 1 through 5], the commission shall administer state aid to public libraries. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries;

(b) augment and extend services provided by public libraries; and

(c) permit new types of library services based on local need.

(2) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries. The commission may withhold a distribution to a library that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if such a decrease may reasonably be linked to money received or expected to be received under [sections 1 through 5].

Section 3. **State aid — per capita — per square mile.** The commission shall distribute grants to public libraries on a per capita and per square mile basis.

Section 4. **State interlibrary loan program — reimbursement — eligibility.** (1) Each Montana library eligible for reimbursement under this section for participation in the statewide interlibrary loan program must be reimbursed according to the rules adopted by the commission.

(2) Libraries eligible for interlibrary loan reimbursement under this section include public libraries, libraries operated by public schools or school districts, libraries operated by public colleges or universities, libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit private educational or research institutions.

Section 5. **State multilibrary card.** The commission shall develop a program to allow Montana libraries to issue to residents a state multilibrary card as defined in 22-1-301.

Section 6. **Commission rulemaking authority.** The commission may adopt rules and procedures for the distribution of state aid to public libraries on a per capita and per square mile basis, for issuance of state multilibrary cards, and for reimbursement for interlibrary loan lending.

Section 7. **Base grants.** The commission shall provide a base grant for each public library to support the cooperative activities and services of the six library federations in the state.

Section 8. Section 22-1-301, MCA, is amended to read:

**"22-1-301. Definitions.** *Unless otherwise provided, the following definitions apply in this part:*

*(1) "City"* means city or town.

*(2) "Commission" means the state library commission.*

*(3) "Public library" means a library created under 22-1-303 through 22-1-317 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles.*

*(4) "State multilibrary card" means a card that is issued to a Montana resident by a public library created under 22-1-303 and that may be used for library services in every public library in the state."*

Section 9. **Appropriation.** There is appropriated from the state general fund to the state library commission for the 1989-91 biennium the following amounts for the designated purposes:

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(1) to direct aid to local public libraries on a per capita and per square mile basis; ~~$932,082~~;

(2) to reimburse libraries for interlibrary loan lending, $400,000;

(3) to reimburse for development and issuance of a state multilibrary card, ~~$179,418~~; and

(4) to provide a base grant for each public library to provide support for federation libraries, $166,000; and

(5) for administration, ~~$25,162~~.

Section 10. **Codification instruction.** Sections 1 through 7 are intended to be codified as an integral part of Title 22, chapter 1, part 3, and the provisions of Title 22, chapter 1, part 3, apply to sections 1 through 7.

Section 11. **Effective date.** [This act] is effective July 1, 1989.

Approved May 15, 1989.

# CHAPTER NO. 671

[SB 215]

THE "EMPLOYEE OWNERSHIP OPPORTUNITY ACT"; EXTENDING BUSINESS ASSISTANCE PROGRAMS TO EMPLOYEE-OWNED ENTERPRISES; EXEMPTING SECURITIES OF EMPLOYEE-OWNED ENTERPRISES FROM SECURITIES REGISTRATION; AMENDING SECTION 30-10-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 5] may be cited as the "Employee Ownership Opportunity Act".

Section 2. **Employee ownership development policy.** It is the policy of this state to encourage the formation of employee-owned enterprises in order to stabilize local economies, to anchor business activity by increasing and broadening community investments, to increase productivity, and to encourage new capital formation through employee ownership.

Section 3. **Definitions.** As used in [sections 2 through 5], the following definitions apply:

(1) "Employee-owned enterprise" means a business corporation that:

(a) requires that at least a majority of its employees:

(i) are vested with stock in the enterprise and all of whose vested employees are entitled to vote; and

(ii) own a majority of the shares which must be voted so that the vote of a majority of the employees control the vote of a majority of shares;

(b) requires that voting rights on corporate matters for shares held in trust for the employees pass through to those employees at least to the

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extent required by the voting requirements of section 409(e) of the Internal Revenue Code of 1986, as amended;

(c) provides vested employees the right to vote on corporate matters, including merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale; and

(d) requires that at least a majority of the members of the board of directors is elected by the employees of the enterprise.

(2) "Employee ownership group" means a group that may include a corporation, labor organization, or other groups of persons voluntarily affiliated for the purpose of actively engaging in an effort to establish an employee-owned enterprise.

Section 4. **Extension of business assistance services to employee-owned enterprises.** A business assistance program operated by the state must include employee-owned enterprises within the scope of its business assistance activities. An employee-owned enterprise is eligible for assistance, service, or financing available through any business assistance program receiving state money.

Section 5. **Department to offer employee ownership development services.** The department of commerce shall:

(1) compile, organize, and make available to the public a library of resources on the subject of employee ownership and participatory management;

(2) research the role of employee ownership in successful state and local economic development programs of other states;

(3) provide public education on the beneficial aspects of employee-owned enterprises;

(4) conduct seminars, workshops, and conferences to increase awareness of the benefits found to be common to employee-owned enterprises. At least one seminar must be held annually for public officials dealing with economic development, business assistance, and business financing programs.

(5) provide technical assistance and counseling on the establishment and management of employee-owned enterprises.

Section 6. Section 30-10-105, MCA, is amended to read:

**"30-10-105. Exempt transactions.** Except as in this section expressly provided, 30-10-201 through 30-10-207 shall not apply to any of the following transactions:

(1) any nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) any nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

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(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the order.

(3) any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in the performance of his official duties as such;

(6) any transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(8) (a) any transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended.

(b) For the purpose of the exemption provided for in subsection (8)(a), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) any offer or sale of a preorganization certificate or subscription if:

(a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(b) the number of subscribers does not exceed 10; and

(c) no payment is made by any subscriber;

(10) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection;

(11) any offer (but not a sale) of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if no stop, refusal, denial, suspension, or revocation order is in effect and no public proceeding or examination looking toward such an order is pending under either law;

(12) any offer (but not a sale) of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner in his discretion does not disallow the offer in writing within 10 days of such filing;

(13) the issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;

(14) any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

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(15) any transaction in compliance with such rules as the commissioner in his discretion may adopt to serve the purposes of 30-10-102. The commissioner may in his discretion require that 30-10-201 through 30-10-207 apply to any or all transactional exemptions adopted by rule.

(16) any transaction by a certified Montana capital company as defined in 90-8-104, provided that such company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals; and

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by such payment is delivered into the possession of a depository (other than the seller) that:

(i) (A) is a financial institution (meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state);

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or

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handling as merchants each commodity subject to the contract or any byproduct of the commodity;

*(21) any offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code of 1986;*

*[(22) any offer or sale of a membership share issued by an employee cooperative corporation organized under the provisions of Senate Bill No. 246 (LC 1149)]."*

Section 7. **Coordination.** If [Senate Bill No. 246 (LC 1149)] is not passed and approved, the references to [Senate Bill No. 246 (LC 1149)] in [sections 1 through 6] are void and must be deleted by the code commissioner.

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved May 16, 1989.

# CHAPTER NO. 672

[SB 410]

AN ACT GENERALLY REVISING THE TAXATION OF METAL MINES; CLARIFYING THE VALUE AT WHICH GROSS PROCEEDS AND METAL MINES LICENSE TAXES ARE LEVIED; REVISING THE ALLOCATION FORMULA OF THE METAL MINES LICENSE TAX; INCLUDING THE RESOURCE INDEMNITY TRUST FUND AND CERTAIN UNITS OF LOCAL GOVERNMENT IN WHICH A MINE IS LOCATED IN THE ALLOCATION OF THE METAL MINES LICENSE TAX; EXEMPTING METAL MINES FROM THE RESOURCE INDEMNITY TRUST TAX; ESTABLISHING A COUNTY HARD-ROCK MINE TRUST RESERVE ACCOUNT AND METAL MINES TAX RESERVE ACCOUNTS FOR COUNTY GOVERNMENTS AND LOCAL SCHOOL DISTRICTS; TRANSFERRING, AFTER FISCAL YEAR 1990 AND AT THE END OF EACH SUBSEQUENT FISCAL YEAR, FUNDS REMAINING IN THE HARD-ROCK MINING IMPACT TRUST ACCOUNT TO THE COUNTY HARD-ROCK MINE TRUST RESERVE ACCOUNT; STATUTORILY APPROPRIATING FUNDS; AMENDING SECTIONS 15-23-801, 15-37-102 THROUGH 15-37-106, 15-37-108, 15-37-117, 15-38-202, 17-7-502, AND 90-6-304 THROUGH 90-6-306, MCA; REPEALING SECTIONS 90-6-321 AND 90-6-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-23-801, MCA, is amended to read:

**"15-23-801. Definitions.** As used in this part, the following definitions apply:

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(1) "Agreement not at arm's length" means an agreement between parties where the sales price does not represent market value.

(2) "Department" means the department of revenue.

(3) "Gross proceeds" or "gross metal yield" *or "gross value of product"* means the *receipts* realized from the extraction *and sale* of metals *or concentrate containing metals.*

*(4)* "Merchantable value" means the *receipts* of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, the merchantable value in the county in which they are extracted *is* the *receipts received for* these metals after processing.

*(5) "Receipts received" means the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal trader, smelter, roaster, or refinery by the quoted price for the metal and then subtracting basic treatment and refinery charges, quantity deductions, price deductions, interest, and penalty metal, impurity, and moisture deductions as specified by contract between the mining company and the receiving metal trader, smelter, roaster, or refinery. Deductions are not allowed, either directly or indirectly as an offset to payments, for the cost of transportation from the mine or mill to the smelter, roaster, or refinery. Demurrage, storage, interest, or any other miscellaneous costs related to transporting the mineral product are considered transportation and are not deductible."*

Section 2. Section 15-37-102, MCA, is amended to read:

**"15-37-102. Gross value of metal mine yield — computation.** The "*annual* reporting date", as used in this part, means the last day of the calendar *year.* The "*annual* gross value of product", as used in this part, means the *receipts received, as defined in 15-23-801, from* all merchantable metals *or concentrate containing metals* or precious and semiprecious gems and stones extracted or produced each calendar *year* from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from *the* mine or mining property or from tailings resulting from the smelting, reduction, or treatment of *the* ores."

Section 3. Section 15-37-103, MCA, is amended to read:

**"15-37-103. Rate of tax.** *(1)* The annual license tax to be paid by *a* person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals or precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by *the* person from *mining* business, work, or operation within this state during the calendar year immediately preceding.

*(2) Concentrate shipped to a smelter, mill, or reduction work is taxed* at the following rates:

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| Gross Value of Product | Rate of Tax (percentage of gross value) |
|---|---|
| first $250,000 | 0% |
| more than $250,000 | *1.81% of the increment* |

*(3) Gold, silver, or any platinum-group metal that is dore, bullion, or matte and that is shipped to a refinery is taxed at the following rates:*

| *Gross Value of Product* | *Rate of Tax (percentage of gross value)* |
|---|---|
| *first $250,000* | *0%* |
| *more than $250,000* | *1.6% of the increment*" |

Section 4. Section 15-37-104, MCA, is amended to read:

**"15-37-104. Mine operator's statement of gross value — reports and sampling.** (1) Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced must, not later than *March 31* of each *year* when engaged in or carrying on any *mining* business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by *the* person during the calendar *year* immediately preceding. If good cause is shown, the department may grant a reasonable extension of the time for filing statements. The statement shall be in the form prescribed by the department of revenue and shall show the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which *the* ore or concentrate has been shipped or sold during the period covered by the statement and other information as the department may require;

(e) the gross yield of *the* ores, concentrates, mineral products, or deposits in constituents of commercial value, *such as* the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of *the* ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the *annual* gross value of product in dollars and cents.

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

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(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property."

Section 5. Section 15-37-105, MCA, is amended to read:

**"15-37-105. Computation and payment of tax.** (1) The tax due under this part is computed according to 15-37-103 and is due and payable on or before March *31* of each year for the products produced in the preceding calendar year. The tax due under this part becomes delinquent as of midnight on March *31* of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest at a rate of 1% a month or any part thereof.

(2) If any person has sold or otherwise disposed of any of *the* mine's products at a price substantially below the true market price of *the* product at the time and place of sale or disposal, then the department shall compute the gross value of *the* portion of *the* mine's product sold or disposed of substantially below the market price. *The* gross value shall be based upon the quotations of the price of *the* mine's product in New York City at the time *the* portion of the product was sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York, or some other standard publication, giving the market reports for the year covered by *the* statement. *If* there *is* no quotation covering any particular product, then the department shall fix the value of *the* gross product or portion *of the gross product that was* sold or otherwise disposed of at a price substantially below the true market price at the time and place of sale or disposal in a manner as may seem to be equitable."

Section 6. Section 15-37-106, MCA, is amended to read:

**"15-37-106. Procedure in case of failure to file statements.** If any person shall fail, refuse, or neglect to make and file *the* required *annual statement* of gross yield for a production year on or before March *31* of the year immediately following the production year, the department of revenue shall, immediately after *the* time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information which the department may be able to obtain the total gross value of product of *the* person from *the* business during the calendar year immediately preceding the year in which the license tax is to be paid. *The department* shall make and file a statement showing the amount of *the* gross value of product and shall ascertain, determine, compute, and assess the amount of the license taxes due from and to be paid by *the* person and shall immediately give notice to *the* person in the same manner as though *the* statement had been filed within time. *The department* shall proceed to collect *the* license tax, *along with* the same penalty and interest as provided for other delinquencies."

Section 7. Section 15-37-108, MCA, is amended to read:

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**"15-37-108. Delinquent taxes — penalty.** All license taxes assessed under the provisions of this part shall become delinquent if not paid on or before midnight of March *31* of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax a penalty of *10%*. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the *10%* penalty if it determines that a reasonable cause exists for failure to pay the tax on or before March *31* of the year immediately following the production year."

Section 8. Section 15-37-117, MCA, is amended to read:

**"15-37-117. Disposition of metalliferous mines license taxes.** *(1)* Metalliferous mines license taxes collected under the provisions of this part are allocated as follows:

*(a)* to the credit of the general fund of the state, *58%* of total collections each year;

*(b)* to the state special revenue fund to the credit of a hard-rock mining impact trust account, *1.5%* of total collections each year;

*(c) to the state resource indemnity trust fund, 15.5% of total collections each year;*

*(d) to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:*

*(i) not less than 40% to the county hard-rock mine trust reserve account established in [section 9]; and*

*(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows, except that more than one entity may share an allocation if a jurisdictional revenue disparity is identified pursuant to subsection (2):*

*(A) 33 ⅓% is allocated to the county for planning or economic development activities;*

*(B) 33 ⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and*

*(C) 33 ⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.*

*(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.*

*(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."*

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Section 9. **County hard-rock mine trust reserve account — expenditure restrictions.** (1) The governing body of a county receiving an allocation under 15-37-117(1)(d) shall establish a county hard-rock mine trust reserve account.

(2) Money received by a county pursuant to 15-37-117 or [section 10] must remain in the account and may not be appropriated by the governing body until:

(a) a mining operation has permanently ceased all mining related activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

(3) If the circumstances described in subsections (2)(a) or (2)(b) occur, the governing body of the county must allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county, and may use the remaining funds in the account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the reserve account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account.

Section 10. **Fund transfer.** (1) On July 1, 1990, and on each July 1 thereafter, all funds remaining in the hard-rock mining impact trust account established in 90-6-304(2) after June 30 immediately preceding must be transferred to the county for which the funds have been held in deposit. The funds so transferred must be deposited in the county hard-rock mine trust reserve account established in [section 9].

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(2) The transfer of funds required by this section is a statutory appropriation pursuant to 17-7-502.

Section 11. **Exemption from resource indemnity trust tax.** A person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1, is exempt from the resource indemnity trust tax.

Section 12. Section 15-38-202, MCA, is amended to read:

**"15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All *money* paid into the resource indemnity trust fund, *including money payable into the fund under the provisions of 15-37-117,* shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added *to the trust fund* until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) At the beginning of each biennium, an amount not to exceed $175,000 is allocated from the interest income of the resource indemnity trust fund to the environmental contingency account pursuant to the conditions of 75-1-1101. The remainder of the interest income is allocated as follows:

(a) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.

(b) Beginning in fiscal year 1988, 12% of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(c) Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2.

(d) Beginning in fiscal year 1990, 46% of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(e) Beginning in fiscal year 1990, 4% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

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Section 13. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; *15-37-117;* 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; *[section 10];* 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 14. Section 90-6-304, MCA, is amended to read:

**"90-6-304. Accounts established.** (1) There is within the state special revenue fund a hard-rock mining impact account. Moneys are payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Money is payable into this account under the provisions of 15-37-117. After deducting the administrative and operating

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expenses of the board as provided in 90-6-303, money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the hard-rock mining impact board. *If money available to pay administrative and operating expenses is insufficient, the board may apply for supplemental money from the general fund.*"

Section 15. Section 90-6-305, MCA, is amended to read:

"**90-6-305. Hard-rock mining impact board — general powers.** (1) The board may:

(a) retain professional staff, consultants, and advisors notwithstanding the provisions of 2-15-121;

(b) adopt rules governing its proceedings, determinations, and administration of this part;

(c) award grants to local government units subject to 90-6-306;

*(d)* make payments to local government units from money paid to the hard-rock mining impact account as provided in 90-6-307;

*(e)* make determinations as provided in 90-6-307; and

*(f)* accept grants and other funds to be used in carrying out this part.

(2) The provisions of the Montana Administrative Procedure Act apply to the proceedings and determinations of the board."

Section 16. Section 90-6-306, MCA, is amended to read:

"**90-6-306. Basis for awarding grants.** Grants shall be awarded to local government units on the basis of:

(1) need;

(2) severity of impact from mineral development;

(3) availability of funds; and

(4) extent of local effort in meeting its needs."

Section 17. **Metal mines tax reserve account.** (1) The governing body of a county receiving tax collections under 15-37-117(1)(d) may establish a metal mines tax reserve account to be used to hold the collections. The governing body may hold money in the account for any time period deemed appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose provided by law.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve account must be credited to the account.

Section 18. **Metal mines tax reserve account.** (1) The governing body of a local school district receiving tax collections under 15-37-117(1)(d) may establish a metal mines tax reserve account to be used to hold the collections. The governing body may hold money in the account for any time period deemed appropriate by the governing body. Money held

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in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose provided by law.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve account must be credited to the account.

Section 19. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 20. **Codification instruction.** (1) [Section 11] is intended to be codified as an integral part of Title 15, chapter 38, part 1, and the provisions of Title 15, chapter 38, part 1, apply to [section 11].

(2) [Sections 9 and 17] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 9 and 17].

(3) [Section 18] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 18].

(4) [Section 10] is intended to be codified as an integral part of Title 90, chapter 6, part 3, and the provisions of Title 90, chapter 6, part 3, apply to [section 10].

Section 21. **Repealer.** Sections 90-6-321 and 90-6-322, MCA, are repealed.

Section 22. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 23. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved May 16, 1989.

# CHAPTER NO. 673

[SB 465]

AN ACT ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO RECEIVE CONTRIBUTIONS FOR ANY PERMITS REQUIRED TO CONTROL EMISSIONS FROM MAJOR OPEN BURNING OF TIMBER SLASH; EXCLUDING AGRICULTURAL STUBBLES AND OTHER CROP RESIDUES; CREATING A SMOKE MANAGEMENT ACCOUNT FOR DEPOSIT OF CONTRIBUTIONS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Open burning permit contributions for timber slash.** (1) The department may receive contributions from public agencies and industry for any permits the board may require pursuant to 75-2-203 to

control emissions from any open burning of timber slash, excluding agricultural stubbles and other crop residues, capable of emitting more than 500 tons of carbon monoxide per calendar year or 50 tons per calendar year of any other pollutant regulated by the board, except hydrocarbons.

(2) The contributions may not exceed the costs incurred by the department to conduct meteorological forecasting and monitoring needed to implement an ambient air smoke management program and must be applied equitably to those required to obtain permits for open burning.

(3) At least annually the department, in consultation with any organized smoke management group composed of representatives of the department, public agencies, and industry, shall:

(a) determine the costs described in subsection (2) of implementing an ambient air smoke management program; and

(b) establish the appropriate share of contributions for required permits based on the percentage of total acreage planned for open burning.

Section 2. **Smoke management account.** (1) There is a smoke management account within the state special revenue fund.

(2) The department shall deposit contributions collected pursuant to [section 1] in the state special revenue fund to the credit of the smoke management account for use by the department to conduct meteorological forecasting and monitoring needed to implement an ambient air smoke management program.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 2, and the provisions of Title 75, chapter 2, apply to [sections 1 and 2].

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Section 5. **Termination.** [This act] terminates July 1, 1991.

Approved May 16, 1989.

# CHAPTER NO. 674

[HB 28]

AN ACT REVISING THE STATE MINIMUM WAGE LAWS TO REQUIRE THE STATE MINIMUM WAGE TO BE SET IN ACCORDANCE WITH FEDERAL LAW, BUT NOT TO EXCEED $4 AN HOUR; INCREASING THE MINIMUM MONTHLY WAGE FOR FARM WORKERS; ESTABLISHING A LOWER MINIMUM WAGE FOR EMPLOYEES WHO ARE NEWLY HIRED; AMENDING SECTION 39-3-404, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] grants the commissioner of labor and industry authority to adopt rules to establish the minimum wage provided for in 39-3-404(1). It is the intent of the

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legislature that the commissioner, in adopting rules, shall establish a minimum wage that is the same minimum hourly wage rate as provided under the federal Fair Labor Standards Act, but not to exceed $4 an hour.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 39-3-404, MCA, is amended to read:

"**39-3-404. Minimum wage.** (1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), every employer shall pay to each of his employees *a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with [section 2].*

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than *$635* a month *beginning January 1, 1990.*"

Section 2. **Adoption of minimum wage rates.** The commissioner shall adopt rules to establish a minimum wage that must be the same minimum hourly wage rate as provided under the federal Fair Labor Standards Act (29 U.S.C. 206), but not to exceed $4 an hour.

Section 3. **New hire wage.** (1) In lieu of the minimum wage provided for in 39-3-404(1), an employer may pay an employee a wage of at least $3.35 an hour if the employee has not been previously employed by the employer.

(2) An employer may pay an employee the minimum wage authorized in subsection (1) for a period not to exceed 120 calendar days beginning from the date the employee is hired.

(3) An employee may not be displaced by another employee (including partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) for the purpose of allowing the employer to pay the minimum wage described in this section.

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Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 5. **Effective date.** [This act] is effective January 1, 1990.

Approved May 16, 1989.

# CHAPTER NO. 675

[HB 333]

AN ACT TO APPROPRIATE $1 MILLION OF THE ENVIRONMENTAL QUALITY PROTECTION FUND FOR USE BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR EXPENDITURES RELATING TO RELEASES OF HAZARDOUS OR DELETERIOUS SUBSTANCES; TO REQUIRE A REPORT TO THE LEGISLATURE ON EXPENDITURES FROM THE FUND; AMENDING SECTION 75-10-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-10-704, MCA, is amended to read:

**"75-10-704. Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used *by the department only* to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances. Fund uses must include the conduct of the hazardous waste site remedial action program, which is a program of remedial action at sites:

(a) where a release has occurred; and

(b) where the U.S. environmental protection agency has, under the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, conducted a hazard ranking study and judged the site not eligible for inclusion on the national priority list or where the U.S. environmental protection agency has no authority or no plan to assess the site under CERCLA.

(3) The department's program for remedial action under subsection (2) must include:

(a) a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

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(b) investigation, negotiation, and legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, damages, and department expenditures recovered pursuant to 75-10-715;

(b) funds appropriated to the fund by the legislature; and

(c) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

*(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.*

*(6)* Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

*(7) The department shall submit to the legislature at the beginning of each regular session a complete financial report on the fund, including a description of all expenditures made since the preceding report.*"

Section 2. **Appropriation.** For the biennium ending June 30, 1991, there is appropriated $1 million a year to the department of health and environmental sciences from the environmental quality protection fund to be spent for the purposes of the fund, as provided in 75-10-704.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved May 16, 1989.

# CHAPTER NO. 676

[HB 469]

AN ACT TO APPROPRIATE TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES $50,000 FOR THE CONTINUED OPERATION OF AIR QUALITY MONITORING STATIONS IN YELLOWSTONE COUNTY, CONTINGENT UPON CONTINUED MONITORING BY PRIVATE INDUSTRIES; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** (1) Subject to the condition specified in subsection (2), there is appropriated $50,000 from the general fund for the biennium ending June 30, 1991, to the department of health and environmental sciences to continue to operate air quality monitoring stations in Yellowstone County during the 1990-91 biennium.

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(2) The appropriation in subsection (1) is contingent upon private industries continuing to operate those air quality monitoring stations in Yellowstone County during the 1990-91 biennium that the industries established during the 1988-89 biennium.

(3) The department is authorized to spend any funds appropriated or contributed to it under the provisions of [this act] for the purpose specified in subsection (1).

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved May 16, 1989.

# CHAPTER NO. 677

[HB 486]

AN ACT TO REQUIRE GROUNDWATER MONITORING AT CERTAIN MUNICIPAL SOLID WASTE LANDFILLS AND WASTE DISPOSAL SITES; AND AMENDING SECTIONS 75-10-203 AND 75-10-204, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of health and environmental sciences concerning the adoption of rules authorized by the bill. The purpose of the new rules is to establish appropriate requirements for groundwater monitoring at municipal solid waste landfills and other disposal sites as specified in the bill. The rules must address the following topics:

(a) the types and quality of information the department requires from owners and operators of municipal solid waste landfills and other disposal sites in order to prepare the groundwater monitoring priority compliance list;

(b) requirements concerning the number and placement of monitoring wells, considering hydrologic, geologic, and other relevant factors;

(c) the content of plans for the design, construction, and maintenance of monitoring wells and systems; and

(d) requirements for collecting, recording, and reporting monitoring results.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 75-10-203, MCA, is amended to read:

**"75-10-203. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

*(4) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.*

*(5) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.*

*(6)* "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

*(7)* "Resource recovery" means the recovery of material or energy from solid waste.

*(8)* "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

*(9)* "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

*(10)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

*(11)* "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

*(12)* "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

*(13)* "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

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*(14)* "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 2. **Groundwater monitoring.** (1) Owners and operators of municipal solid waste landfills and other disposal sites that at any time accepted household waste, that are in operation as of [the effective date of this act], and that serve a geographic area with a population of 5,000 or more persons as determined by the most recent census are required to monitor groundwater as specified by the department.

(2) If the owner or operator of a municipal solid waste landfill or other disposal site specified in subsection (1) can demonstrate to the department that there is no potential for migration of constituents from the site that could cause pollution of groundwater during the active life of the site, including the closure period, and during postclosure care, the requirement for groundwater monitoring specified in subsection (1) does not apply. The information provided to the department to make this demonstration must be certified by a qualified geologist, hydrogeologist, or geotechnical engineer and must include reliable site-specific data.

(3) Based on site-specific information that owners and operators of municipal solid waste landfills and other disposal sites specified in subsection (1) provide to the department, the department shall establish a priority compliance list that identifies those sites where there is the greatest risk that constituents from the sites may cause pollution of groundwater, considering:

(a) proximity to current and potential drinking water supplies;

(b) site hydrologic and geologic characteristics; and

(c) age and design of the site.

(4) Owners and operators of municipal solid waste landfills and other disposal sites specified in subsection (1) shall submit proposed plans to the department for accomplishing groundwater monitoring, consistent with requirements specified by department rules. The plans may be based on the information owners and operators provide to the department as specified in subsection (3). The department may approve the plans as submitted or require modifications to the plans as necessary to accomplish the purposes of this section.

(5) All sites included on the priority compliance list authorized by subsection (3) must comply with this section by January 1, 1991. All other sites subject to this section must comply by January 1, 1992.

Section 3. Section 75-10-204, MCA, is amended to read:

**"75-10-204. Powers and duties of department.** The department shall adopt rules governing solid waste management systems which shall include but *are* not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

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(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

*(5) requirements relating to groundwater monitoring, including but not limited to:*

*(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in [section 2] must submit to the department to enable the department to prepare the priority compliance list authorized by [section 2(3)];*

*(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and*

*(c) recordkeeping and reporting; and*

*(6)* any other factors relating to the sanitary disposal or management of solid wastes."

Section 4. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 2].

Approved May 16, 1989.

# CHAPTER NO. 678

[HB 601]

AN ACT CREATING A WASTEWATER TREATMENT WORKS REVOLVING LOAN PROGRAM; ESTABLISHING A WASTEWATER TREATMENT WORKS REVOLVING FUND; AUTHORIZING THE ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS UNDER THE FEDERAL CLEAN WATER ACT; AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER THE PROGRAM; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE'S SHARE OF THE REVOLVING FUND; STATUTORILY APPROPRIATING TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES MONEY RECEIVED UNDER THE PROGRAM; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

This bill creates a revolving loan program capitalized with federal and state funds to provide financial assistance for water pollution control

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projects. A statement of intent is required for this bill because it delegates rulemaking authority to the board of health and environmental sciences and the board of natural resources and conservation to implement the provisions of this bill.

The boards are authorized to adopt rules necessary for the establishment and administration of the water treatment works revolving loan program. The authority includes establishing rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for making the loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans, if deemed appropriate and necessary for the successful administration of the program, to be made to municipalities and private concerns.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [This act] may be cited as the "Wastewater Treatment Revolving Fund Act".

Section 2. **Definitions.** Unless the context requires otherwise, in [this act] the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program start-up costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a wastewater treatment works project, all capital costs incurred or to be incurred by a municipality or a private concern, including but not limited to engineering, financing and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated thereunder.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Loan" means a loan of money from the revolving fund to a municipality or a private concern.

(5) "Municipality" means any city, town, or other local government unit having authority to own and operate a sewage system and wastewater treatment works.

(6) "Private concern" means an individual or other entity eligible for a loan or loans for a pollution control project for a nonpoint source under section 319 of the federal act.

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(7) "Program" means the wastewater treatment works revolving loan program established by [this act].

(8) "Project" means a wastewater treatment works or part of a wastewater treatment works for which a municipality or private concern makes an application for a loan or other financial assistance.

(9) "Revolving fund" means the fund established by [section 5].

Section 3. **Wastewater treatment works revolving loan program.** There is a program under which the state may provide financial assistance to municipalities and private concerns to finance or refinance part or all of the cost of projects. The program must be administered in accordance with [this act] and the federal act.

Section 4. **Authorization of agreement — content.** (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in [section 5];

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by [section 5] on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private concerns in accordance with [this act] in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private concern will maintain project accounts in accordance with generally accepted government accounting standards;

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(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of [this act].

Section 5. **Revolving fund.** (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of wastewater treatment works and grants or transfers of grants received under subchapter II of the federal act for construction of wastewater treatment works;

(b) the state allocation account, the proceeds of bonds of the state issued pursuant to [section 11] and other money appropriated by the legislature;

(c) the administration account, 4%, or the maximum amount allowed by the federal act, of the capitalization grant award for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in the other accounts in the revolving fund; and

(e) the debt service account, all interest earnings on bond proceeds and the interest portion of loan repayments.

(3) Each loan made as authorized by [section 10] must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department, and all amounts received in repayment of principal of a loan must be credited in the same proportion to the federal allocation account or the state allocation account, or both. All amounts received in payment of interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to [section 11] and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred by the board of examiners, upon request of the department of natural resources and conservation, to other accounts within the revolving fund.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and [this act].

Section 6. **Uses of revolving fund.** Money in the revolving fund may be used to:

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(1) make loans to municipalities and private concerns to finance all or a portion of the cost of a project;

(2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts; and

(7) pay reasonable administrative costs of the revolving loan program not to exceed 4%, or the maximum amount allowed under the federal act, of all federal grant awards to the fund.

Section 7. **Applications.** (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan to finance construction of a project must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) if the applicant is a municipality, a statement as to whether, at the time of application, there are any outstanding bonds, notes, or other obligations of the municipality that were issued or incurred to finance any part of the municipality's sewage system and, if so, a description of the bonds, notes, or other obligations; and

(g) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to engineering reports, economic feasibility studies, and legal opinions.

(2) Each application for a loan to refinance a project, including a purchase of outstanding obligations issued by a municipality to finance a project in whole or in part, must include:

(a) a reasonably detailed description of the project;

(b) a schedule of the cost of the project;

(c) the date on which construction of the project began;

(d) a description of the bonds, notes, or other obligations to be refinanced and of any other notes, bonds, or obligations issued or incurred to finance any part of the municipality's sewage system; and

(e) any other information that the department or the department of natural resources and conservation may require.

(3) Each application for financial assistance in the form of a guaranty or the purchase of insurance for a municipal obligation must include all items required by subsection (1) and any other information the department may require.

Section 8. **Evaluation of applications.** After consultation with the department of natural resources and conservation, the department shall evaluate and annually rank applications for loans and other financial assistance. In ranking the applications, the department must consider the following factors:

(1) the ability of the municipality or private concern to pay the costs of the project without the requested financial assistance;

(2) the amount available for financial assistance in the revolving fund;

(3) the total amount requested by other applications that have been received or that are likely to be received;

(4) the need for and benefit to be derived from the project;

(5) in the case of an application to refinance an outstanding obligation, the benefit of refinancing as measured by a decrease in interest rates and whether the refinancing permits the construction of an additional project by the municipality; and

(6) any other criteria that the department determines appropriate, considering the purposes of the federal act and the program.

Section 9. **Rulemaking.** The board and the board of natural resources and conservation may adopt rules within their respective authorities established within the provisions of [this act], including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private concerns, if considered appropriate and necessary for the successful administration of the program.

Section 10. **Loans.** (1) Upon approval of an application by the department, the department of natural resources and conservation may lend

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amounts on deposit in the revolving fund to a municipality or private concern to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private concern complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to assure sufficient revenues to operate and maintain the project for its useful life and to repay the loan;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than 20 years;

(c) agreeing to maintain proper financial records in accordance with recognized government accounting procedures and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements for public wastewater systems established by the board; and

(h) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, the interest rate on a loan must enable the state to pay the principal of and interest on the bonds issued pursuant to [section 11].

(a) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(b) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loan. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private concern, in a form prescribed

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or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of [this act]. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private concern. Administrative fees must be deposited in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in [section 5]. Money deposited in the special administrative costs account must be used for the payment of administrative costs of the program.

Section 11. **Authorization of bonds — appropriation of proceeds.** (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state in an aggregate principal amount not exceeding $10 million to provide money for the revolving loan program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received, are appropriated to the state allocation account of the wastewater treatment works revolving fund. Any premium and accrued interest must be deposited to the debt service account. Proceeds of bonds deposited in the state allocation account may be used to pay the costs of issuing the bonds. For purposes of sections 17-5-803 and 17-5-804, the state allocation account constitutes a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in [this act] without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

Section 12. **Statutory appropriation.** Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of making loans to municipalities and private concerns and paying debt service on obligations. Money in the special administrative costs account authorized by [section 10] is subject to legislative appropriation constraints, and expenditures from this account must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

Section 13. **Creation of debt.** The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $10 million and the

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issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the program.

Section 14. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; section 1, Chapter 454, Laws of 1987; *and [section 12]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"**

Section 15. **Codification instruction.** [Sections 1 through 13] are intended to be codified as an integral part of Title 75, chapter 5, and the provisions Title 75, chapter 5, apply to [sections 1 through 13].

Section 16. **Requirements for approval of state debt — severability.** Because [section 13] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 13]. If [this act] is not approved by the required vote, [section 13]

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is void. The remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment.

Section 17. **Effective date.** [This act] is effective July 1, 1989.

Approved May 16, 1989.

# CHAPTER NO. 679

[HB 641]

AN ACT AUTHORIZING A LOCAL GOVERNMENT TO EXEMPT AN INDUSTRIAL PARK OWNED BY A LOCAL ECONOMIC DEVELOPMENT ORGANIZATION OR PORT AUTHORITY FROM CERTAIN PROPERTY TAXES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** Unless the context requires otherwise, the following definitions apply to [section 2]:

(1) "Industrial park" means property zoned for light and heavy industry. The term includes fully developed or partially developed land and improvements and undeveloped land.

(2) "Local economic development organization" means a private, nonprofit organization whose primary purposes are to develop the economy of its area and to provide assistance to businesses in that area.

(3) "Port authority" means a port authority created under 7-14-1101 or 7-14-1102.

Section 2. **Industrial park tax exemption — procedure — termination.** (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from certain local property taxes as provided in this section.

(2) In order to qualify for the tax exemption described in this section, the governing body of the affected county, consolidated government, or incorporated city or town shall approve the tax exemption by resolution, after notice and hearing. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

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(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. The exemption may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(4) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 and 2].

Approved May 16, 1989.

# CHAPTER NO. 680

[HB 760]

AN ACT APPROPRIATING MONEY TO EASTERN MONTANA COLLEGE TO FUND AN ECONOMIC ANALYSIS OF A BILLINGS-AREA RESERVOIR SITE FOR RECREATION OR OTHER PURPOSES; AND FUNDING AN ECONOMIC ANALYSIS OF THE CURRENT MONETARY VALUE OF THE COMMITMENT BY THE UNITED STATES CONGRESS PURSUANT TO THE PICK-SLOAN MISSOURI BASIN PROGRAM ESTABLISHED BY THE FLOOD CONTROL ACT OF 1944.

WHEREAS, the Billings area needs additional reservoir water for various uses, including recreation; and

WHEREAS, the Pick-Sloan Missouri Basin program established under the Flood Control Act of 1944 specifically provides for a water development commitment, known as the ultimate development concept, to promote water development in the Upper Missouri Basin states; and

WHEREAS, the 1988 drought demonstrated that the Yellowstone River Basin, including the Billings area, could benefit substantially from additional off-stream storage; and

WHEREAS, Montana's water development program specifically contemplates off-stream storage development as one of its major objectives; and

WHEREAS, the United States Bureau of Reclamation has made a good-faith commitment to explore reservoir potentials in the Billings area; and

WHEREAS, Yellowstone County's local governments firmly support efforts to explore development of a reservoir site; and

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WHEREAS, a thorough feasibility study that uses current economic conditions in evaluating the recreational, water supply, wildlife, and possible hydropower benefits associated with reservoir development may describe a very attractive project for federal or private funding; and

WHEREAS, construction of a reservoir in the Billings area would provide valuable off-stream storage, recreational, and other benefits.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated $7,500 from the general fund to eastern Montana college to use as money in conducting an economic analysis with the United States bureau of reclamation on the current economic value of the commitment by the United States congress to promote water development in the Upper Missouri Basin states pursuant to the Pick-Sloan Missouri Basin program established by the Flood Control Act of 1944.

Approved May 16, 1989.

# CHAPTER NO. 681

[HB 202]

AN ACT TO INCREASE THE CIGARETTE TAX BY 2 CENTS TO PAY COSTS OF A STUDY CONDUCTED BY THE DEPARTMENT OF MILITARY AFFAIRS IN CONSIDERING LOCATIONS FOR THE CONSTRUCTION OF A STATE NURSING HOME OR DOMICILIARY HOME FOR VETERANS AND TO PROVIDE REVENUE FOR CONSTRUCTION AND REMODELING COSTS OF SUCH FACILITIES; TO PRORATE THE TAX IN CERTAIN INSTANCES; TO APPROPRIATE MONEY FOR THE STUDY, CONSTRUCTION, AND REMODELING; AMENDING SECTIONS 16-11-111, 16-11-119, AND 17-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation for veterans home project.** (1) The following money is appropriated for the biennium ending June 30, 1991, from the capital projects fund:

(a) $30,000 to the department of military affairs to pay costs of a study conducted by the department to consider locations for the construction of state nursing homes and domiciliary homes for veterans in Montana; and

(b) $1,991,897 to the department of administration for construction and remodeling, including land purchase and design costs, of state nursing homes and domiciliary homes for veterans in Montana.

(2) There is appropriated to the department of administration for the biennium ending June 30, 1991, $3,699,237 in spending authority from federal special revenue received from the veterans' administration.

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Section 2. Section 16-11-111, MCA, is amended to read:

**"16-11-111. Cigarette sales tax.** There is hereby levied, imposed, and assessed and there shall be collected and paid to the state of Montana upon cigarettes sold or possessed in this state the following excise tax which shall be paid prior to the time of sale and delivery *of cigarettes*: *18* cents on each package containing 20 cigarettes and, when packages contain more *or less* than 20 cigarettes, then a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes."

Section 3. Section 16-11-119, MCA, is amended to read:

**"16-11-119. Disposition of taxes — retirement of bonds.** All moneys collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by said section, shall be paid to the state treasurer and deposited as follows: *70.89%* in the long-range building program fund in the debt service fund type *and 29.11%* in the long-range building program fund in the capital projects fund type."

Section 4. Section 17-5-408, MCA, is amended to read:

**"17-5-408. Percentage of income, corporation license, and cigarette tax pledged.** (1) (a) The state pledges and appropriates and directs to be credited as received to the debt service account 10% of all money received from the collection of the individual income tax and 11% of all money, except as provided in 15-31-702, received from the collection of the corporation license and income tax as provided in 15-1-501, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4).

(b) No more than the percentages described in subsection (1)(a) of such tax collections may be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the debt service account *70.89%* of all money received from the collection of the excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 5. **Effective date.** [Sections 3 and 4 of this act] are effective November 1, 1989.

Approved May 16, 1989.

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# CHAPTER NO. 682

[HB 535]

AN ACT REVISING MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS TO COMPLY WITH THE FEDERAL MEDICARE CATASTROPHIC COVERAGE ACT OF 1988, P.L. 100-360; PROVIDING A PENALTY FOR VIOLATION OF MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS; APPROPRIATING MONEY TO THE STATE AUDITOR TO MONITOR COMPLIANCE; AMENDING SECTIONS 33-16-103 AND 33-22-903 THROUGH 33-22-908, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR THE EXTENSION OF RULEMAKING AUTHORITY.

STATEMENT OF INTENT

A statement of intent is required for this bill because it authorizes the state commissioner of insurance to make and amend reasonable rules relating to specific standards that medicare supplement insurance policies or certificates must meet, minimum standards for benefits and claims payment, minimum standards for loss ratios, and the timing and manner of premium adjustments. The legislature intends that the rules that the commissioner adopts to implement this bill be designed to allow the commissioner to comply with the federal standards established by the Medicare Catastrophic Coverage Act of 1988, P.L. 100-360.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 33-16-103, MCA, is amended to read:

"**33-16-103. Application.** This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter *applies* to:

(1) life insurance;

(2) disability insurance, *except medicare supplement insurance subject to the provisions of chapter 22, part 9*;

(3) reinsurance, except joint reinsurance as provided in 33-16-307;

(4) insurance against loss of or damage to aircraft, their hulls, accessories, and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of aircraft;

(5) insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies."

Section 2. Section 33-22-903, MCA, is amended to read:

"**33-22-903. Definitions.** As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and

(b) in the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

(2) "Certificate" means a certificate *delivered or* issued *for delivery in this state* under a group medicare supplement policy *or subscriber contract.*

*(3) "Health care expenses":*

*(a) means expenses of a health maintenance organization associated with the delivery of health care services that are analogous to incurred losses of an insurer;*

*(b) does not include home office and overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, or claims processing costs.*

*(4) "Entity" means an insurer as defined in 33-1-201, a health service corporation as defined in 33-30-101, and a health maintenance organization as defined in 33-31-102.*

*(5)* "Medicare" means Health Insurance for the Aged, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

*(6)* "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of a health service corporation that is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age. The term does not include:

(a) a policy or contract of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations; or

(b) a policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:

(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) has been maintained in good faith for purposes other than obtaining insurance; and

(iii) has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members;

(c) individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions that are

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inconsistent with the requirements of this part or policies issued to employees or members as additions to franchise plans in existence on April 8, 1981."

Section 3. Section 33-22-904, MCA, is amended to read:

**"33-22-904. Standards for policy provisions — rules.** *(1) A medicare supplement insurance policy, contract, or certificate in force in this state may not contain benefits that duplicate benefits provided by medicare.*

*(2)* The commissioner shall adopt reasonable rules to establish specific standards for policy provisions of medicare supplement policies *and certificates*. The standards are in addition to and in accordance with applicable laws of this state, including the provisions of Title 33, chapter 22, and may cover but are not limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage;

(d) probationary periods;

(e) benefit limitations, exceptions, and reductions;

(f) elimination periods;

(g) requirements for replacement;

(h) recurrent conditions; and

(i) definitions of terms.

*(3)* The commissioner may adopt reasonable rules that prohibit policy provisions not otherwise specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy.

*(4)* Notwithstanding any other provisions of the law, a medicare supplement policy may not deny a claim for losses incurred more than 6 months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage."

Section 4. Section 33-22-905, MCA, is amended to read:

**"33-22-905. Minimum standards for benefits and payment of claims — rules.** The commissioner shall *adopt* reasonable rules to establish minimum standards for benefits *and payment of claims* for medicare supplement policies."

Section 5. Section 33-22-906, MCA, is amended to read:

**"33-22-906. Loss ratio standards and filing requirements — limits on compensation.** *(1) Every entity providing group medicare*

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*supplement insurance benefits to a resident of this state shall file a copy of the master policy and each certificate used in this state with the commissioner as required by 33-1-501. The filing must be made not less than 60 days in advance of the delivery of any certificate or policy to a resident of this state.*

*(2)* Medicare supplement policies are expected to return to policyholders benefits that are reasonable in relation to the premium charged. The commissioner shall adopt reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience *or incurred health care expenses, where coverage is provided by a health maintenance organization on a service rather than reimbursement basis,* and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies. *Every entity providing medicare supplement insurance benefits to a resident of this state shall make premium adjustments:*

*(a) necessary to produce an expected loss ratio under the policy or contract that meets the minimum loss ratio standards for medicare supplement policies as established by rule; and*

*(b) expected to result in a loss ratio at least as great as that originally anticipated by the entity when it established current premiums for the medicare supplement insurance policy or contract.*

*(3) The commissioner shall by rule establish the timing and manner of the premium adjustments. Every entity providing medicare supplement policies or certificates in this state shall annually file with the commissioner its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this part. An entity transacting medicare supplement insurance in this state may not adjust its rates more than twice a year and may not adjust its rates for the first year a policy is in force, except to allow for changes in federal laws or regulations relating to medicare. Each filing of rates and rating schedules must demonstrate that the actual and expected losses in relation to premiums complies with the requirements of this part.*

*(4) An entity may not provide compensation to its agents or solicitors that is greater than the renewal compensation that would be paid on an existing policy if:*

*(a) the existing policy were replaced by another policy with the same insurer and the new policy benefits are substantially similar to the benefits under the old policy; and*

*(b) the old policy was issued by the same insurer or insurance group."*

Section 6. Section 33-22-907, MCA, is amended to read:

**"33-22-907. Disclosure standards — informational brochure — rules.** (1) In order to provide for full and fair disclosure in the sale of

medicare supplement policies, a medicare supplement policy may not be delivered or issued for delivery in this state and a certificate may not be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made. *The outline of coverage must be filed with the commissioner as required by 33-1-501. The filing must be made at least 60 days in advance of the date the outline of coverage is delivered to any resident of this state.*

(2) (a) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1).

(b) For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions.

(c) The outline of coverage must include:

(i) a description of the principal benefits and coverage provided in the policy;

(ii) a statement of the exceptions, reductions, and limitations contained in the policy;

(iii) a statement of the renewal provisions including any reservation by the insurer of a right to change premiums;

(iv) a statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare by reason of age, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare at the same time the outline of coverage is delivered. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request, but not later than the time of policy delivery, to any prospective insureds eligible for medicare by reason of age.

(4) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare by reason of age, other than:

(a) medicare supplement policies;

(b) disability income policies;

(c) basic, catastrophic, or major medical expense policies;

(d) single premium, nonrenewable policies; or

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(e) other policies *excepted* in 33-22-903*(6)*.

(5) The commissioner may further adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for medicare by reason of age.

*(6) As soon as practicable, but no later than 30 days before the annual effective date of a medicare benefit change, every entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders, contract holders, and certificate holders, in a format that the commissioner prescribes by rule, of the changes it has made to the medicare supplement insurance policy or contract."*

Section 7. Section 33-22-908, MCA, is amended to read:

**"33-22-908. Notice of free examination.** Medicare supplement policies or certificates must have a notice prominently printed on the first page of the policy *or certificate* or attached thereto stating in substance that the applicant has the right to return the policy or certificate within *30* days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. *The insurer shall pay any refund made pursuant to this section directly to the applicant in a timely manner."*

Section 8. **Filing requirements for advertising.** Every entity providing medicare supplement insurance or benefits in this state shall provide to the commissioner for his review a copy of any medicare supplement advertising intended for use in this state, whether through written, radio, or television medium.

Section 9. **Penalties.** In addition to any other penalties for violations of the insurance code, the commissioner may after hearing require entities violating any provision of or rule adopted under Title 33, chapter 16, or this part to cease marketing a medicare supplement policy or certificate in this state that is related directly or indirectly to the violation or take such action as is necessary to comply with the provisions of Title 33, chapter 16, or this part or the rules adopted under Title 33, chapter 16, or this part, or both.

Section 10. **Appropriation.** There is appropriated to the state auditor's office from the insurance regulatory trust account $25,891.00 for the fiscal year ending June 30, 1990, and $22,697.00 for the fiscal year ending June 30, 1991, for one staff position to review medicare supplement insurance advertising, assist with preparation of the Medicare Supplement Insurance Buyer's Guide, and monitor compliance with applicable federal regulations.

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Codification instruction.** [Sections 8 and 9] are intended to be codified as an integral part of Title 33, chapter 22, part 9, and the provisions of Title 33, chapter 22, part 9, apply to [sections 8 and 9].

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Section 13. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before October 1, 1989.

Section 14. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Applicability.** Except as otherwise specifically provided, [this act] applies to every medicare supplement policy and membership contract delivered or issued for delivery in this state after October 1, 1989, and every certificate delivered or issued for delivery in this state after October 1, 1989.

Section 16. **Effective date.** [Section 11 and this section] are effective on passage and approval.

Approved May 16, 1989.

## CHAPTER NO. 683

[HB 547]

AN ACT ESTABLISHING A STATE HOME FOR VETERANS, NOT TO EXCEED 100 BEDS, IN EASTERN MONTANA; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE AND SELL NO MORE THAN $1.4 MILLION IN LONG-RANGE BUILDING PROGRAM BONDS FOR PLANNING AND CONSTRUCTION; PROVIDING FOR AN AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE DEPARTMENT OF INSTITUTIONS; ENSURING ADEQUATE GENERAL FUND SUPPORT FOR FUTURE OPERATIONS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO CREATE THE NECESSARY ACCOUNTS FOR THE ADMINISTRATION OF ALL STATE, FEDERAL, AND OTHER FUNDS FOR ITS CONSTRUCTION AND OPERATION; AUTHORIZING THE DEPARTMENT OF INSTITUTIONS TO APPLY FOR FEDERAL ASSISTANCE GRANTS; PROVIDING FOR FUNDING A PLANNING AND STUDY PROCESS; EXEMPTING THE VETERANS' HOME FROM CERTIFICATE OF NEED REVIEW; AMENDING SECTIONS 10-2-401 THROUGH 10-2-404, 53-1-202, AND 53-1-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** For the purposes of [this act], the following definitions apply:

(1) "Board" means the board of examiners as provided in 2-15-1007.

(2) "Eastern Montana" means all of the counties east of and including: Blaine, Carbon, Fergus, Golden Valley, Hill, and Stillwater counties.

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(3) "Project" means the construction of a state home for veterans in eastern Montana.

(4) "State veterans' home" or "state home for veterans" means a home established by the state in eastern Montana for veterans disabled by age, disease, or otherwise, who by reason of disability are incapable of earning a living. The home furnishes nursing home and domiciliary care for eligible veterans.

Section 2. **State veterans' home in eastern Montana established.** A state home for veterans is established in eastern Montana at a site to be determined by the site selection committee as provided in [section 3].

Section 3. **Site selection committee.** (1) The governor shall, by June 1, 1989, appoint a committee to select a site for a state veterans' home in eastern Montana.

(2) (a) The voting membership of the committee shall consist of seven honorably discharged veterans of the United States armed forces whose primary residence is in eastern Montana, as defined in [section 1]. There may be no more than one voting committee member from each county referred to in [section 1].

(b) Representatives of the state departments of administration, institutions, and military affairs shall serve as nonvoting members of the committee.

(3) The committee shall:

(a) evaluate the need and appropriateness of locating a state veterans' home in eastern Montana;

(b) establish objective criteria in compliance with federal law for the selection of the most favorable site in eastern Montana for a state veterans' home;

(c) establish criteria that comply with state health requirements;

(d) solicit proposals from communities interested in becoming the location for the state veterans' home;

(e) organize and conduct public hearings in each of the interested communities for the purpose of gathering input and information; and

(f) prepare and forward its recommendation on the most favorable location for the state veterans' home to the governor no later than April 1, 1990.

(4) (a) The recommendation of the site selection committee is binding.

(b) The committee's expenses must be paid by the Montana board of veterans' affairs.

Section 4. **Duties of department.** The department of administration shall:

(1) direct its architecture and engineering division to prepare a long-range building plan for this project pursuant to 17-7-202; and

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(2) carry out duties necessary to begin planning and constructing a state home for veterans in eastern Montana, including but not limited to arrangements for the approval of bonds necessary to fulfill the state's financial obligations for construction of the project.

Section 5. **Authorization of bonds.** The board is authorized, pursuant to 17-5-802, to issue and sell long-range building program bonds in an amount not to exceed $1.4 million or in an amount as may be required to provide funds for the payment of up to 35% of the total $4 million planning and construction costs of a state home for veterans in eastern Montana. The authority contained in this section is in addition to any other authorization to the board to issue long-range building program bonds.

Section 6. **Authorization for refunding bonds.** The board is authorized to issue and sell refunding bonds in an amount necessary to refund any or all long-range building program bonds issued under 17-5-402. The refunding bonds must be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 3. The refunding bonds must be general obligations secured by a pledge of the full faith and credit and taxing powers of the state. Any money released from the debt service account provided for in 17-5-405 as a result of the issuance of refunding bonds must revert to the fund of origin to the extent not required to provide for the debt service on the refunded bonds. Money required for payment of debt service on the refunded bonds may be held in trust in a special escrow account at a bank or trust company for the benefit of the refunded bonds.

Section 7. **Agreement with the department of institutions.** If the proceeds of any bonds or notes issued pursuant to [section 5] are appropriated for the purpose of planning or constructing a state veterans' home in eastern Montana, the board and the department of institutions shall enter into an agreement pursuant to which the department of institutions shall agree to pay to the state treasurer for deposit in the debt service account established pursuant to 17-5-405 amounts sufficient to pay, as due, the principal of and interest on those bonds from which the appropriation was made and to accumulate and maintain the required reserve attributable to those bonds. The agreement must provide that income from the investment of bond proceeds and the reserves not required for planning or construction costs must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the department must be made from funds available therefor.

Section 8. **Benefit of state.** The agreement made pursuant to [section 7] is solely for the benefit of the state of Montana and is not enforceable by bondholders or other third-party beneficiaries.

Section 9. **Application for federal construction grant assistance.** Upon approval of the project by the veterans' administration and an authorization by the state to provide up to 35% of the total planning and construction costs, the department of institutions, pursuant to 38 U.S.C. 5031 through 5037, shall apply for construction grant assistance from the veterans' administration not to exceed 65% of the total planning and construction costs for a state home for veterans in eastern Montana. Construction may not commence before written confirmation of the allocation of

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federal funds to the state for this purpose is received from the veterans' administration.

Section 10. **Pledge to continue operation and maintenance.** Pursuant to 38 U.S.C. 641 and 5035(a)(6), the state shall appropriate from the general fund to the department of institutions financial support necessary to provide for continued operation and maintenance of the project upon completion.

Section 11. Section 10-2-401, MCA, is amended to read:

**"10-2-401. Location and function of homes — persons admitted.** The *institutions* at Columbia Falls *and in eastern Montana are the "Montana veterans' homes"* and *their* primary function *is to provide a* home and subsistence for honorably discharged veterans. The department of institutions may also admit spouses or surviving spouses of honorably discharged veterans to the *homes* if space allows."

Section 12. Section 10-2-402, MCA, is amended to read:

**"10-2-402. Superintendent to be given veterans' preference.** In the selection of the superintendent of *each of* the Montana veterans' *homes*, the department of institutions shall apply the preference granted to veterans and disabled veterans, but not the preference granted to other persons, by Title 39, chapter 30."

Section 13. Section 10-2-403, MCA, is amended to read:

**"10-2-403. Eligibility for residence in home.** To be eligible for residence in *a* Montana veterans' home under the regulations prescribed by the department of institutions, a person must be an honorably discharged veteran or the spouse or surviving spouse of a veteran who served in the armed forces of the United States. Consideration must also be given to:

(1) the person's age;

(2) the person's physical and mental status;

(3) the person's ability or inability to locate suitable alternative accommodations;

(4) the person's term of residence in Montana;

(5) the person's gender as it relates to availability of appropriate living space;

(6) the ability of the Montana veterans' home to meet the person's needs; and

(7) other admission requirements as may be established by the department."

Section 14. Section 10-2-404, MCA, is amended to read:

**"10-2-404. Acceptance and deposit of federal money.** The department of institutions may accept *money* from the federal government that *becomes* available to the state as a result of operating the Montana veterans' *homes* and shall deposit such *money* in the state treasury for the

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benefit of the *homes*. If *a* resident of *a* home is transferred to another institution, as defined in 53-1-101, the department of institutions shall continue to draw from the federal government any *money* available for the maintenance of *the* former resident."

Section 15. Section 53-1-202, MCA, is amended to read:

**"53-1-202. Institutions in department.** (1) The following institutions are in the department:

(a) Montana state hospital;

(b) Montana veterans' home *at Columbia Falls*;

*(c) Montana veterans' home in eastern Montana;*

*(d)* State prison;

*(e)* Montana developmental center;

*(f)* Montana center for the aged;

*(g)* Swan River forest camp; and

*(h)* Eastmont human services center.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 16. Section 53-1-402, MCA, is amended to read:

**"53-1-402. Residents subject to per diem and ancillary charges.** The department shall collect and process per diem and ancillary payments for the care of residents in the following institutions:

(1) Montana state hospital;

(2) Montana developmental center;

(3) Montana veterans' home *at Columbia Falls*;

*(4) Montana veterans' home in eastern Montana;*

*(5)* Montana center for the aged;

*(6)* Eastmont human services center."

Section 17. **Exemption from certificate of need review.** The veterans' home provided for in [section 2] is exempt from certificate of need review under Title 50, chapter 5, part 3.

Section 18. **Appropriation.** (1) There is appropriated to the department of administration the proceeds from the sale of long-range building program bonds for the purpose of planning and constructing a state veterans' home in eastern Montana.

(2) There is appropriated to the department of administration $50,000 from the general fund for the 1991 biennium for the purpose of planning and designing a state veterans' home in eastern Montana. There is appropriated to the department of military affairs $30,000 from the general fund

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for the 1991 biennium for the purpose of conducting a study to determine the location for a veterans' home in eastern Montana.

(3) The appropriation contained in this section includes spending authority for any federal funds received pursuant to the grant referred to in [section 9].

Section 19. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 20. **Requirements for approval of state debt — severability.** Because [section 6] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 6]. If [this act] is not approved by the required vote, [sections 5 through 8 and 18] are void. The remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment.

Section 21. **Coordination instruction.** If House Bill No. 202 is passed and approved, [sections 5 through 8, 18, and 20 of this act] are void.

Section 22. **Effective date.** [This act] is effective on passage and approval.

Approved May 16, 1989.

# CHAPTER NO. 684

[HB 717]

AN ACT REVISING THE USE OF BOND PROCEEDS FOR AGRICULTURAL PROJECTS; AMENDING SECTION 17-5-1503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-5-1503, MCA, is amended to read:

**"17-5-1503. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this part.

(3) "Department" means the department of commerce provided for in 2-15-1801.

*(4) "Finance" means to supply capital and, in the case of agricultural enterprises, to refinance a project and project costs.*

*(5)* "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company,

investment company, trust company, savings institution, or other financial institution approved by the board.

*(6)* "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.

*(7)* "Major project" means a project whose cost or appraised value exceeds $800,000.

*(8)* "Project" means a project as defined in 90-5-101.

*(9)* "Project costs" means the costs of acquiring or improving any project, including the following:

(a) the actual cost of acquiring or improving real estate for any project;

(b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds;

(e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction; *and*

*(f) working capital for agricultural enterprise projects for a period not to exceed 1 year.*"

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 16, 1989.

# CHAPTER NO. 685

[SB 333]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TRUSTS AND TRUSTEES; AMENDING SECTIONS 2-2-103, 31-2-209, 70-20-101, AND 82-1-304, MCA; AND REPEALING SECTIONS 72-12-101 THROUGH 72-12-103, TITLE 72, CHAPTERS 20 THROUGH 25, AND SECTIONS 72-27-101 AND 72-27-102, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 215] shall be known and may be cited as the "Trust Code".

Section 2. **General rule concerning application of trust code.** Except as otherwise provided by statute:

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(1) After September 30, 1989, [sections 1 through 215] apply to all trusts regardless of when they were created, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

(2) After September 30, 1989, [sections 1 through 215] apply to all proceedings concerning trusts whenever commenced, unless in the opinion of the court, application of a particular provision of [sections 1 through 215] would substantially interfere with the effective conduct of the proceedings or the rights of the parties and other interested persons, in which case the particular provision of [sections 1 through 215] does not apply and prior law applies.

Section 3. **Common law as law of state.** Except to the extent that the common law rules governing trusts are modified by statute, the common law as to trusts is the law of this state.

Section 4. **Constructive and resulting trusts not affected.** Other than [sections 19 through 23], nothing in [sections 1 through 215] affects the law relating to constructive or resulting trusts.

Section 5. **Application of code to charitable trusts.** Unless otherwise provided by statute, [sections 1 through 215] apply to charitable trusts that are subject to the jurisdiction of the attorney general.

Section 6. **Laws affecting construction and operation of wills apply to trusts.** (1) Title 72, chapter 2, part 5 and 72-3-901 apply to the construction and operation of trusts, except as provided in subsection (2).

(2) This section does not apply to any trust if its terms expressly or by necessary implication make this section inapplicable to it.

(3) For purposes of [sections 1 through 215], references in Title 72, chapter 2, part 5 and in 72-3-901 to a "testator" refer to the trustor, references to a "will" refer to a trust, references to a "devisee" refer to a trust beneficiary, and references to a "devise" refer to a trust distribution.

Section 7. **Definitions.** As used in [sections 1 through 215] unless the context requires otherwise the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or

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determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.

(8) "Trust property" means the property held in trust.

Section 8. **Reference to statutes — amendments and additions.** Whenever a reference is made to any portion of [sections 1 through 215] or to any other law, the reference applies to all amendments and additions made.

Section 9. **Methods of creating trust.** Subject to other provisions of [sections 1 through 72], a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust.

Section 10. **Intention to create trust.** A trust is created only if the trustor properly manifests an intention to create a trust.

Section 11. **Trust property.** (1) A trust is created only if there is trust property.

(2) The requirement of subsection (1) may be satisfied if the trust (or its trustee) is designated to be beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device, even though the designation may be revoked.

Section 12. **Trust purpose.** A trust may be created for any purpose that is not illegal or against public policy.

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Section 13. **Trust for indefinite or general purposes.** A trust created for an indefinite or general purpose is not invalid for that reason if it can be determined with reasonable certainty that a particular use of the trust property comes within that purpose.

Section 14. **Designation of beneficiary.** (1) A trust, other than a charitable trust, is created only if there is a beneficiary.

(2) The requirement of subsection (1) is satisfied if the trust instrument provides for either of the following:

(a) a beneficiary or class of beneficiaries that is ascertainable with reasonable certainty or that is sufficiently described so it can be determined that some person meets the description or is within the class; or

(b) a grant of power to the trustee or some other person to select the beneficiaries based on a standard or in the discretion of the trustee or other person.

Section 15. **Designation of trust or trustee as beneficiary.** (1) A trust or trustee may be designated as the beneficiary of the proceeds of an insurance contract, an annuity contract, an employee benefit plan, an individual retirement account, or similar device if the designation is made in accordance with the contract, plan, account, or device.

(2) Subsection (1) applies even though the trust or trustee is named or to be named by will or trust and whether or not the will or trust is in existence at the time of the designation.

Section 16. **Statute of frauds.** A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the trustor, or by the trustor's agent if authorized in writing to do so; or

(3) by operation of law.

Section 17. **Consideration.** Consideration is not required to create a trust, but a promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are satisfied.

Section 18. **Exception to doctrine of merger.** If a trust provides for one or more successor beneficiaries after the death of the trustor, the trust is not invalid, merged, or terminated in either of the following circumstances:

(1) where there is one trustor who is the sole trustee and the sole beneficiary during the trustor's lifetime; or

(2) where there are two or more trustors, one or more of whom are trustees, and the beneficial interest in the trust is in one or more of the trustors during the lifetime of the trustors.

Section 19. **Resulting trust upon failure of trust.** Where the owner of property gratuitously transfers it and manifests in the trust instrument

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an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or his estate, unless:

(1) the transferor manifested in the trust instrument an intention that no resulting trust should arise; or

(2) the intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

Section 20. **Resulting trust upon full performance of trust.** Where the owner of property gratuitously transfers it subject to a trust which is properly declared and which is fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or his estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

Section 21. **Purchase money resulting trust.** (1) Where a transfer of property is made to one person and the purchase price is paid by another, a resulting trust arises in favor of the person who paid the purchase price.

(2) Subsection (1) does not apply in any of the following circumstances:

(a) whenever the party paying the purchase price manifests an intention that no resulting trust should arise;

(b) whenever the transferee is a spouse, child, or other natural object of the bounty of the person who paid the purchase price; or

(c) whenever the transfer is made in order to accomplish an illegal purpose and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

(3) Subsection (2)(b) does not apply if the party paying the purchase price manifested an intention that the transferee should not have the beneficial interest in the property.

Section 22. **Constructive trust.** A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the ground that the person holding title would be unjustly enriched if he were permitted to retain it.

Section 23. **Resulting trusts, constructive trusts — statute of frauds.** Resulting trusts and constructive trusts are considered to arise by operation of law and are valid under [section 16(3)].

Section 24. **Restraint on transfer of income.** Except as provided in [section 28], if the trust instrument provides that a beneficiary's interest is not subject to voluntary or involuntary transfer, the beneficiary's interest in income under the trust may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

Section 25. **Restraint on transfer of principal.** (1) Except as provided in subsection (2) and in [section 28], if the trust instrument provides that a beneficiary's interest in principal is not subject to voluntary or

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involuntary transfer, the beneficiary's interest in principal may not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

(2) After an amount of principal has become due and payable to the beneficiary under the trust instrument, upon petition to the court by a judgment creditor, the court may make an order directing the trustee to satisfy the money judgment out of that principal amount. The court in its discretion may issue an order directing the trustee to satisfy all or part of the judgment out of that principal amount.

Section 26. **Trust for support.** Except as provided in [section 28], if the trust instrument provides that the trustee shall pay income or principal or both for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

Section 27. **Transferee or creditor cannot compel trustee to exercise discretion — liability of trustee for payment to or for beneficiary.** (1) If the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount that may be paid only in the exercise of the trustee's discretion.

(2) If the trustee has knowledge of the transfer of the beneficiary's interest or has been served with process by a judgment creditor seeking to reach the beneficiary's interest, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under [section 24 or 25].

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal.

Section 28. **Where trustor is beneficiary.** (1) If the trustor is a beneficiary of a trust created by the trustor and the trustor's interest is subject to a provision restraining the voluntary or involuntary transfer of the trustor's interest, the restraint is invalid against transferees or creditors of the trustor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) If the trustor is the beneficiary of a trust created by the trustor and the trust instrument provides that the trustee shall pay income or principal or both for the education or support of the beneficiary or gives the trustee the discretion to determine the amount of income or principal or both to be paid to or for the benefit of the trustor, a transferee or creditor of the

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trustor may reach the maximum amount that the trustee could pay to or for the benefit of the trustor under the trust instrument, not exceeding the amount of the trustor's proportionate contribution to the trust.

Section 29. **Disclaimer not a transfer.** A disclaimer or renunciation by a beneficiary of all or part of his interest under a trust shall not be considered a transfer under [section 24 or 25].

Section 30. **Presumption of revocability.** Unless a trust is expressly made irrevocable by the trust instrument, the trust is revocable by the trustor. This section applies only where the trustor is domiciled in this state when the trust is created, where the trust instrument is executed in this state, or where the trust instrument provides that the law of this state governs the trust.

Section 31. **Method of revocation by trustor.** (1) A trust that is revocable by the trustor may be revoked in whole or in part by any of the following methods:

(a) by compliance with any method of revocation provided in the trust instrument; or

(b) by a writing (other than a will) signed by the trustor and delivered to the trustee during the lifetime of the trustor. If the trust instrument explicitly makes the method of revocation provided in the trust instrument the exclusive method of revocation, the trust may not be revoked pursuant to this subsection.

(2) A trust may not be revoked by an attorney-in-fact under a power of attorney unless it is expressly permitted by the trust instrument.

(3) Nothing in this section limits the authority to modify or terminate a trust pursuant to [section 33 or 34] in an appropriate case.

(4) The manner of revocation of a trust revocable by the trustor that was created by an instrument executed before October 1, 1989, is governed by prior law and not by this section.

Section 32. **Power to revoke includes power to modify.** Unless the trust instrument provides otherwise, if a trust is revocable by the trustor, the trustor may modify the trust by the procedure for revocation.

Section 33. **Modification or termination of irrevocable trust by all beneficiaries.** (1) Except as provided in subsection (2), if all beneficiaries of an irrevocable trust consent, they may compel modification or termination of the trust upon petition to the court.

(2) If the continuance of the trust is necessary to carry out a material purpose of the trust, the trust cannot be modified or terminated unless the court, in its discretion, determines that the reason for doing so under the circumstances outweighs the interest in accomplishing a material purpose of the trust. Under this section the court does not have discretion to permit termination of a trust that is subject to a valid restraint on transfer of the beneficiary's interest as provided in [sections 24 through 29].

Section 34. **Modification or termination by trustor and all beneficiaries.** (1) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust.

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(2) If any beneficiary does not consent to the modification or termination of the trust, upon petition to the court, the other beneficiaries, with the consent of the trustor, may compel a modification or a partial termination of the trust if the interests of the beneficiaries who do not consent are not substantially impaired.

(3) If the trust provides for the disposition of principal to a class of persons described only as "heirs" or "next of kin" of the trustor, or using other words that describe the class of all persons who would take under the rules of intestacy, the court may limit the class of beneficiaries whose consent is needed to compel the modification or termination of the trust to the beneficiaries who are reasonably likely to take under the circumstances.

Section 35. **Guardian ad litem.** For the purposes of [sections 33 and 34], the consent of a beneficiary who is legally incapacitated, unascertained, or unborn may be given in proceedings before the court by a guardian ad litem, if it would be appropriate to do so. In this case the guardian ad litem may rely on general family benefit accruing to living members of the beneficiary's family as a basis for approving a modification or termination of the trust.

Section 36. **No conclusive presumption of fertility.** In determining the class of beneficiaries whose consent is necessary to modify or terminate a trust pursuant to [section 33 or 34], the presumption of fertility is rebuttable.

Section 37. **Termination of trusts — trustee's powers on termination.** (1) A trust terminates when any of the following occurs:

(a) the term of the trust expires;

(b) the trust purpose is fulfilled;

(c) the trust purpose becomes unlawful;

(d) the trust purpose becomes impossible to fulfill; or

(e) the trust is revoked.

(2) On termination of the trust, the trustee continues to have the powers reasonably necessary under the circumstances to wind up the affairs of the trust.

Section 38. **Trust with uneconomically low principal.** (1) On petition by a trustee or beneficiary, if the court determines that the fair market value of the principal of a trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishment of its purposes, the court may, in its discretion and in a manner that conforms as nearly as possible to the intention of the trustor, order any of the following:

(a) termination of the trust;

(b) modification of the trust; or

(c) appointment of a new trustee.

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(2) Notwithstanding subsection (1), if the trust principal does not exceed $20,000 in value, the trustee has the power to terminate the trust.

(3) The existence of a trust provision restraining transfer of the beneficiary's interest does not prevent application of this section.

Section 39. **Modification or termination.** (1) On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

(2) The court shall consider a trust provision restraining transfer of the beneficiary's interest as a factor in making its decision whether to modify or terminate the trust, but the court is not precluded from exercising its discretion to modify or terminate the trust solely because of a restraint on transfer.

Section 40. **Disposition of property upon termination.** At the termination of a trust, the trust property shall be disposed of as follows:

(1) In the case of a trust that is revoked by the trustor, as directed by the trustor.

(2) In the case of a trust that is terminated by the consent of the trustor and all beneficiaries, as agreed by the trustor and all beneficiaries.

(3) In any other case, as provided in the trust instrument or in a manner directed by the court that conforms as nearly as possible to the intention of the trustor as expressed in the trust instrument. If a trust is terminated by the trustee pursuant to [section 38(2)], the trust property shall be distributed as determined by the trustee pursuant to this subsection.

Section 41. **Combination of similar trusts.** If the terms of two or more trusts are substantially similar, on petition by a trustee or beneficiary, the court, for good cause shown, may combine the trusts if the court determines that administration as a single trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

Section 42. **Division of trusts.** On petition by a trustee or beneficiary, the court, for good cause shown, may divide a trust into two or more separate trusts, if the court determines that dividing the trust will not defeat or substantially impair the accomplishment of the trust purposes or the interests of the beneficiaries.

Section 43. **Charitable trust.** A charitable trust, or the charitable portion of a trust, subjects the trustee to equitable duties to deal with the trust property for a charitable purpose.

Section 44. **Charitable purposes.** Charitable purposes include:

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(1) the relief of poverty;

(2) the advancement of education;

(3) the advancement of religion;

(4) the promotion of health;

(5) governmental or municipal purposes; or

(6) other purposes the accomplishment of which are beneficial to the community.

Section 45. **Enforcement of a charitable trust.** The attorney general, a cotrustee, or a person who has a special interest in the enforcement of the charitable trust can maintain a suit for the enforcement of a charitable trust, but not persons who have no special interest or the trustor or his heirs or personal representative.

Section 46. **Cy pres doctrine.** If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible, impracticable, or illegal to carry out the particular purpose, and if the trustor manifested a general intention to devote the property to charitable purposes, the trust need not fail. The court may direct the application of the property to some charitable purpose which falls within the general charitable intention of the trustor.

Section 47. **Acceptance of trust by trustee.** (1) The person named as trustee may accept the trust, or a modification of the trust, by one of the following methods:

(a) signing the trust instrument or the trust instrument as modified, or signing a separate written acceptance; or

(b) knowingly exercising powers or performing duties under the trust instrument or the trust instrument as modified, except as provided in subsection (2).

(2) In a case where there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the trust or a modification of the trust, if within reasonable time after acting the person delivers a written rejection of the trust or the modification of the trust to the trustor or, if the trustor is dead or incompetent, to a beneficiary. This subsection does not impose a duty on the person named as trustee to act.

Section 48. **Rejection of trust — nonliability of person who rejects trust.** (1) A person named as trustee may in writing reject the trust or a modification of the trust.

(2) If the person named as trustee does not accept the trust or a modification of the trust by a method provided in [section 47(1)] within a reasonable time after learning of being named as trustee or of the modification, the person has rejected the trust or the modification.

(3) A person named as trustee who rejects the trust or a modification of the trust is not liable with respect to the rejected trust or modification.

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Section 49. **Trustee's bond.** (1) A trustee is not required to give a bond to secure performance of the trustee's duties, unless either of the following circumstances occurs:

(a) A bond is required by the trust instrument.

(b) Notwithstanding a waiver of bond in the trust instrument, a bond is found by the court to be necessary to protect the interests of beneficiaries.

(2) Notwithstanding subsection (1)(a), the court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, permit the substitution of another bond with the same or different sureties, or accept another form of security.

(3) If a bond is required, it shall be filed or served, in the amount, and with sureties and liabilities as provided in the trust instrument or as ordered by the court.

(4) Except as otherwise provided in the trust instrument or ordered by the court, the cost of the bond shall be charged against the trust.

(5) A trust company may not be required to give a bond, notwithstanding a contrary provision in the trust instrument.

Section 50. **Certificate of trustee.** On application by the trustee, the clerk of the district court shall issue a certificate that the trustee is a duly appointed and acting trustee under the trust if the court file shows the incumbency of the trustee.

Section 51. **Cotrustees.** (1) Unless otherwise provided in the trust instrument, a power vested in two trustees may only be exercised by their unanimous action.

(2) Unless otherwise provided in the trust instrument, a power vested in three or more trustees may be exercised by a majority of such trustees.

Section 52. **Vacancy in office of cotrustee.** Unless otherwise provided in the trust instrument, if a vacancy occurs in the office of a cotrustee, the remaining cotrustee or cotrustees may act for the trust as if they are the only trustees.

Section 53. **Temporary incapacity of cotrustee.** Unless otherwise provided in the trust instrument, if a cotrustee is unavailable to perform the duties of the cotrustee because of absence, illness, or other temporary incapacity, the remaining cotrustee or cotrustees may act for the trust when necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property as if they are the only trustees.

Section 54. **Resignation of the trustee.** (1) A trustee who has accepted the trust may resign only by one of the following methods:

(a) as provided in the trust instrument;

(b) in the case of a revocable trust, with the consent of the person holding the power to revoke the trust;

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(c) in the case of a trust that is not revocable, with the consent of only all of the adult beneficiaries who are receiving or are entitled to receive income under the trust or to receive a distribution of principal if the trust were terminated at the time consent is sought; or

(d) pursuant to a court order obtained as provided in subsection (2).

(2) On petition by the trustee, the court shall accept the trustee's resignation. The court may also make any orders necessary for the preservation of the trust property, including the appointment of a receiver or a temporary trustee.

Section 55. **Liability upon resignation.** The liability for acts or omissions of a resigning trustee or of the sureties on the trustee's bond, if any, is not released or affected in any manner by the trustee's resignation.

Section 56. **Removal of a trustee.** (1) A trustee may be removed in accordance with the trust instrument or by the court on its own motion or on petition of a cotrustee or beneficiary.

(2) The grounds for removal of a trustee by the court include the following:

(a) if the trustee has committed a breach of the trust;

(b) if the trustee is insolvent or otherwise unfit to administer the trust;

(c) if hostility or lack of cooperation among cotrustees impairs the administration of the trust;

(d) if the trustee fails or declines to act; or

(e) for other good cause.

(3) If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary, compel the trustee whose removal is sought to surrender trust property to a cotrustee or to a receiver or temporary trustee. The court may also suspend the powers of the trustee to the extent the court considers necessary.

Section 57. **Vacancy in office of trustee.** There is a vacancy in the office of trustee in any of the following circumstances:

(1) The person named as trustee rejects the trust.

(2) The person named as trustee cannot be identified or does not exist.

(3) The trustee resigns or is removed.

(4) The trustee dies.

(5) A conservator or guardian of an individual trustee is appointed.

(6) A certificate of incorporation of a trust company is revoked or its powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

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(7) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

Section 58. **Delivery of property by former trustee upon occurrence of vacancy.** When a vacancy has occurred in the office of trustee, the former trustee who holds property of the trust shall deliver the trust property to the successor trustee or a person appointed by the court to receive the property and remains responsible for the trust property until it is delivered. A trustee who has resigned or is removed has the powers reasonably necessary under the circumstances to preserve the trust property until it is delivered to the successor trustee and to perform actions necessary to complete the resigning or removed trustee's administration of the trust.

Section 59. **Appointment of trustee to fill vacancy.** (1) If the trust has no trustee or if the trust instrument requires a vacancy in the office of a cotrustee to be filled, the vacancy shall be filled as provided in this section.

(2) If the trust instrument provides a practical method of appointing a trustee or names the person to fill the vacancy, the vacancy shall be filled as provided in the trust instrument.

(3) If the vacancy in the office of trustee is not filled as provided in subsection (2), on petition of a cotrustee or beneficiary the court may, in its discretion, appoint a trustee to fill the vacancy. If the trust provides for more than one trustee, the court may, in its discretion, appoint the original number or any lesser number of trustees. In selecting a trustee, the court shall give consideration to the wishes of the beneficiaries who are 14 years of age or older.

Section 60. **Capacity of trustee.** (1) The trustee must have the legal capacity to take, hold, and transfer the trust property. The trustee may be a natural person or a corporation or trust company. If the trustee is a corporation, it must be qualified to act as a trustee in this state.

(2) A beneficiary of a trust may be the trustee of the trust.

(3) The trustor of a trust may be the trustee of the trust.

Section 61. **Trustee's compensation as provided in trust instrument — different compensation.** (1) Subject to subsection (2), if the trust instrument provides for the trustee's compensation, the trustee is entitled to be compensated in accordance with the trust instrument.

(2) Upon proper showing, the court may fix or allow greater or lesser compensation than could be allowed under the terms of the trust in any of the following circumstances:

(a) whenever the duties of the trustee are substantially different from those contemplated when the trust was created;

(b) whenever the compensation in accordance with the terms of the trust would be inequitable or unreasonably low or high; or

(c) in extraordinary circumstances calling for equitable relief.

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(3) An order fixing or allowing greater or lesser compensation under subsection (2) applies only prospectively to actions taken in administration of the trust after the order is made.

Section 62. **Trustee's compensation where trust silent.** If the trust instrument does not specify the trustee's compensation, the trustee is entitled to reasonable compensation.

Section 63. **Compensation for services rendered in making temporary investments.** In addition to other compensation to which the trustee is entitled, the trustee is entitled to make a reasonable charge for services rendered in making temporary investments.

Section 64. **Court determination of prospective compensation.** The court may fix an amount of periodic compensation under [sections 61 and 62] to continue for as long as the court determines is proper.

Section 65. **Compensation of cotrustees.** Unless the trust instrument otherwise provides or the trustees otherwise agree, if the trust has two or more trustees, the compensation shall be apportioned among the cotrustees according to the services rendered by them.

Section 66. **Repayment of trustee for expenditures.** A trustee is entitled to the repayment out of the trust property for the following:

(1) expenditures that were properly incurred in the administration of the trust; and

(2) to the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

Section 67. **Trustee's lien.** The trustee has an equitable lien on the trust property as against the beneficiary in the amount of advances, with any interest, made for the protection of the trust, and for expenses, losses, and liabilities sustained in the administration of the trust or because of ownership or control of any trust property.

Section 68. **Limits on rights of beneficiary of revocable trust.** Except to the extent that the trust instrument otherwise provides or where the joint action of the trustor and all beneficiaries is required, during the time that a trust is revocable and the person holding the power to revoke the trust is competent:

(1) The person holding the power to revoke, and not the beneficiary, has the rights afforded beneficiaries under [sections 1 through 215].

(2) The duties of the trustee are owed to the person holding the power to revoke.

Section 69. **Consent by beneficiary of revocable trust.** (1) In any case where the consent of a beneficiary may be given or is required to be given before an action may be taken, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, the person holding the power to revoke, and not the beneficiary, has the power to consent or withhold consent.

(2) This section does not apply where the joint consent of the trustor and all beneficiaries is required by statute.

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Section 70. **Notice to beneficiary of revocable trust.** Notwithstanding any other statute, during the time that a trust is revocable and the person holding the power to revoke the trust is competent, a notice that is to be given to a beneficiary shall be given to the person holding the power to revoke and not to the beneficiary.

Section 71. **Rights of holder of power of appointment or withdrawal.** The holder of a presently exercisable general power of appointment or power to withdraw property from the trust has the rights of a trustor provided by [sections 68 through 70], inclusive, to the extent of the holder's power over the trust property.

Section 72. **Notice in case involving future interest of beneficiary.** (1) Subject to subsections (2) and (3), it is sufficient compliance with a requirement in [sections 1 through 215] that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:

(a) Whenever an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened immediately before the commencement of the proceedings.

(b) Whenever an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living persons, notice shall be given to the living person.

(c) Whenever an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.

(2) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subsection (1), notice shall also be given to persons not otherwise entitled to notice under subsection (1) with respect to whom the conflict of interest exists.

(3) Nothing in this section affects any of the following:

(a) requirements for notice to:

(i) a person who has requested special notice;

(ii) a person who has filed notice of appearance; or

(iii) a particular person or entity required by statute to be given notice.

(b) Availability of a guardian ad litem pursuant to [section 187].

Section 73. **Duty to administer trust.** On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument

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and, except to the extent the trust instrument provides otherwise, according to [sections 1 through 215].

Section 74. **Duties of trustee of revocable trust.** (1) Except as provided in subsection (2), the trustee of a revocable trust shall follow any written direction acceptable to the trustee given from time to time:

(a) by the person then having the power to revoke the trust or the part thereof with respect to which the direction is given; or

(b) by the person to whom the trustor delegates the right to direct the trustee.

(2) If a written direction given under subsection (1) would have the effect of modifying the trust, the trustee has no duty to follow the direction unless it complies with the requirements for modifying the trust.

Section 75. **Duty of loyalty.** (1) The trustee has a duty to administer the trust solely in the interest of the beneficiaries.

(2) It is not a violation of the duty provided in subsection (1) for a trustee who administers two trusts to sell, exchange, or participate in the sale or exchange of trust property between the trusts, if both of the following requirements are met:

(a) the sale or exchange is fair and reasonable with respect to the beneficiaries of both trusts; and

(b) the trustee gives to the beneficiaries of both trusts notice of all material facts related to the sale or exchange that the trustee knows or should know.

Section 76. **Duty to deal impartially with beneficiaries.** If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them.

Section 77. **Duty to avoid conflict of interest.** (1) The trustee has a duty not to use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.

(2) The trustee may not enforce any claim against the trust property that the trustee purchased after or in contemplation of appointment as trustee, but the court may allow the trustee to be reimbursed from trust property the amount that the trustee paid for the claim.

(3) A transaction between the trustee and a beneficiary which occurs during the existence of the trust or while the trustee's influence with the beneficiary remains and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties. This presumption is a presumption affecting the burden of proof. This subsection does not apply to the provisions of an agreement between a trustee and a beneficiary relating to the hiring or compensation of the trustee.

Section 78. **Duty not to undertake adverse trust.** The trustee of one trust has a duty not to knowingly become a trustee of another trust

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adverse in its nature to the interest of the beneficiary of the first trust, and a duty to eliminate the conflict or resign as trustee when the conflict is discovered.

Section 79. **Duty to take control of and preserve trust property.** The trustee has a duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

Section 80. **Duty to make trust property productive.** The trustee has a duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.

Section 81. **Duty to dispose of improper investments.** (1) Except as provided in subsection (2), the trustee has a duty within a reasonable time to dispose of any part of the trust property included in the trust at the time of its creation, or later acquired by or added to the trust, that would not be a proper investment for the trustee to make.

(2) Unless the trust instrument expressly provides otherwise, the trustee may, without liability, continue to hold property included in the trust at its creation or later added to the trust or acquired pursuant to proper authority, if retention is in the best interests of the trust or in furtherance of the purposes of the trust.

Section 82. **Duty to keep trust property separate and identified.** The trustee has a duty to do the following:

(1) to keep the trust property separate from other property not subject to the trust; and

(2) to see that the trust property is designated as property of the trust.

Section 83. **Duty to enforce claims.** The trustee has a duty to take reasonable steps to enforce claims that are part of the trust property.

Section 84. **Duty to defend actions.** The trustee has a duty to take reasonable steps to defend actions that may result in a loss to the trust.

Section 85. **Duty not to delegate.** (1) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(2) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

Section 86. **Duty with respect to cotrustees.** If a trust has more than one trustee, each trustee has a duty to do the following:

(1) to participate in the administration of the trust; and

(2) to take reasonable steps to prevent a cotrustee from committing a breach of trust or to compel a cotrustee to redress a breach of trust.

Section 87. **Duty to use special skills.** (1) The trustee has a duty to apply the full extent of the trustee's skills.

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(2) If the trustor, in selecting the trustee, has relied on the trustee's representation of having special skills, the trustee is held to the standard of the skills represented.

Section 88. **Certain actions not violations of duties.** The provision of services for compensation by a regulated financial institution or its affiliates in the ordinary course of business either to a trust of which it also acts as trustee or to a person dealing with the trust is not a violation of the duty provided in [section 75 or 77]. For the purposes of this section, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

Section 89. **Duty to use ordinary skill and prudence.** (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.

(3) The trustor may expand or restrict the standards provided in subsections (1) and (2) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

Section 90. **Standard of care not affected by compensation.** A trustee's standard of care and performance in administering the trust is not affected by whether or not the trustee receives any compensation.

Section 91. **Interpretation of trust terms concerning legal investments.** If a trust created before, on, or after October 1, 1989, refers to "investments permissible by law for investment of trust funds", "authorized by law for investment of trust funds", "legal investments", "authorized investments", or "investments acquired using the judgment and care which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income, as well as the probable safety of their capital", or uses other words of similar meaning in defining the powers of the trustee relative to investments, such language, in the absence of other controlling or modifying provisions of the trust instrument, shall be construed as imposing the standard of care provided by [section 89] and authorizing any investment permitted under [sections 105 through 137].

Section 92. **Trustee's general duty to report information to beneficiaries.** The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.

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Section 93. **Duty to report information about trust on request.** Except as provided in [section 95], on reasonable request by a beneficiary, the trustee shall provide the beneficiary with a report of information about the assets, liabilities, receipts, and disbursements of the trust, the acts of the trustee, and the particulars relating to the administration of the trust relevant to the beneficiary's interest, including the terms of the trust that describe or affect the beneficiary's interest.

Section 94. **Duty to provide annual statement to income beneficiaries.** Except as provided in [section 95], the trustee shall annually mail each income beneficiary an itemized statement of all current receipts and disbursements of both principal and income.

Section 95. **Exceptions to duty to report information and to provide annual statement.** The trustee is not required to report information or to provide an annual statement to a beneficiary in any of the following circumstances:

(1) to the extent the trust instrument waives the report or annual statement;

(2) in the case of a beneficiary of a revocable trust, as provided in [section 68].

(3) as to a beneficiary who has waived in writing the right to a report or annual statement. A waiver of rights under this subsection may be withdrawn in writing at any time as to the most recent annual statement or future annual statements. A waiver has no effect of the beneficiary's right to petition for a report, statement, or account pursuant to [section 179]; or

(4) if the beneficiary and the trustee are the same person.

Section 96. **Permissive accounts.** At any time during the term of the trust or upon the termination of the trust, the trustee may mail an account to trust beneficiaries. To effectively bar a beneficiary from an action against the trustee pursuant to [section 159], the account must contain the following information:

(1) a statement of receipts and disbursements of principal and income that have occurred since the last account;

(2) a statement of the assets and liabilities of the trust since the last account;

(3) the trustee's compensation since the last account;

(4) the agents hired by the trustee, their relationship to the trustee, if any, and their compensation since the last account;

(5) a statement that the recipient of the account may petition the court pursuant to [section 179] to obtain a court review of the account and of the acts of the trustee; and

(6) a statement that claims against the trustee for breach of trust may not be made after the expiration of 3 years from the date the beneficiary receives an account disclosing facts giving rise to the claim.

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Section 97. **Discretionary powers to be exercised reasonably.** Except as provided in [section 98], a discretionary power conferred upon a trustee is not left to the trustee's arbitrary discretion, but shall be exercised reasonably.

Section 98. **Standard for exercise of "absolute", "sole", or "uncontrolled" powers.** (1) Subject to the additional requirements of subsection (2), if a trust instrument confers "absolute", "sole", or "uncontrolled" discretion on a trustee, the trustee shall act in accordance with fiduciary principles and may not act in disregard of the purposes of the trust.

(2) Notwithstanding the trustor's use of terms like "absolute", "sole", or "uncontrolled", a person who is a beneficiary of a trust and who, either individually or as trustee or cotrustee, holds a power to take or distribute income or principal to or for the benefit of himself or herself pursuant to a standard, shall exercise that power reasonably and in accordance with the standard. In any case in which the standard governing the exercise of the power does not clearly indicate that a broader power is intended, the holder of the power may exercise it in his or her favor only for his or her health, education, support, or maintenance.

Section 99. **Definitions.** As used in [sections 99 through 104], the following definitions apply:

(1) "Charitable trust" means a charitable trust as described in section 4947(a)(1) of the Internal Revenue Code.

(2) "Private foundation" means a private foundation as defined in section 509 of the Internal Revenue Code.

(3) "Split-interest trust" means a split-interest trust as described in section 4947(a)(2) of the Internal Revenue Code.

Section 100. **Distribution under charitable trust or private foundation.** During any period when a trust is considered to be a charitable trust or a private foundation, the trustee shall distribute its income for each taxable year (and principal if necessary) at a time and in a manner that will not subject the property of the trust to tax under section 4942 of the Internal Revenue Code.

Section 101. **Restrictions on trustees under charitable trust, private foundations, or split-interest trust.** During any period when a trust is considered to be a charitable trust, a private foundation, or a split-interest trust, the trustee may not do any of the following:

(1) engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(2) retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(3) make any investments in such manner as to subject the property of the trust to tax under section 4944 of the Internal Revenue Code; or

(4) make any taxable expenditure as defined in section 4945(d) of the Internal Revenue Code.

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Section 102. **Exceptions applicable to split-interest trusts.** With respect to split-interest trusts:

(1) [Subsections (2) and (3) of section 101] do not apply to any trust described in section 4947(b)(3) of the Internal Revenue Code.

(2) [Section 101] does not apply with respect to any of the following:

(a) any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;

(b) any amounts in trust other than amounts for which a deduction was allowed under section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if the amounts are segregated, as that term is defined in section 4947(a)(3) of the Internal Revenue Code, from amounts for which no deduction was allowable; or

(c) any amounts irrevocably transferred in trust before May 27, 1969.

Section 103. **Incorporation in trust instruments.** The provisions of [sections 100 through 102] shall be considered to be contained in the instrument creating every trust to which [sections 99 through 104] apply. Any provision of the instrument inconsistent with or contrary to [sections 99 through 104] is without effect.

Section 104. **Proceedings.** (1) A proceeding contemplated by section 101(l)(3) of the federal Tax Reform Act of 1969 (Public Law 91-172) may be commenced pursuant to [section 179] by the organization involved. All specifically named beneficiaries of the organization and the attorney general shall be parties to the proceedings. Notwithstanding [section 165], this provision is not exclusive and does not limit any jurisdiction that otherwise exists.

(2) If an instrument creating a trust affected by this section has been recorded, a notice of pendency of judicial proceedings under this section shall be recorded in a similar manner within 10 days from the commencement of the proceedings. A duly certified copy of any final judgment or decree in the proceedings shall be similarly recorded.

Section 105. **General powers of trustee.** A trustee has the following powers without the need to obtain court authorization:

(1) the powers conferred by the trust instrument;

(2) except as limited in the trust instrument, the powers conferred by statute; and

(3) except as limited in the trust instrument, the power to perform any act that a trustee would perform for the purposes of the trust under the standard of care provided in [section 89].

Section 106. **Power of court to relieve trustee from restrictions on powers.** [Sections 109 through 137] do not affect the power of a court to relieve a trustee from restrictions on the exercise of powers under the trust instrument.

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Section 107. **Exercise of powers subject to trustee's duties.** The grant of a power to a trustee, whether by the trust instrument, by statute, or by the court, does not in itself require or permit the exercise of the power. The exercise of a power by a trustee is subject to the trustee's fiduciary duties.

Section 108. **Application of rules governing trustees' powers.** An instrument that incorporates the powers provided in former Title 72, chapter 21, ("Montana Trustees' Powers Act") shall be considered to refer to the powers provided [sections 109 through 137]. For this purpose, the trustee's powers under former Title 72, chapter 21, ("Montana Trustees' Powers Act") are not diminished and the trustee is not required to obtain court approval for exercise of a power for which court approval was not required by former law.

Section 109. **Collecting and holding property.** The trustee has the power to collect, hold, and retain trust property received from a trustor or any other person until, in the judgment of the trustee, disposition of the property should be made. The property may be retained even though it includes property in which the trustee is personally interested.

Section 110. **Receiving additions to trust.** The trustee has the power to accept additions to the property of the trust from a trustor or any other person.

Section 111. **Participation in business — change in form of business.** The trustee has the power to continue to participate in the operation of any business or other enterprise that is part of the trust property and may effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

Section 112. **Investments.** The trustee has the power to invest in any kind of property, whether real, personal, or mixed.

Section 113. **Investments in obligations of United States government.** In the absence of an express provision to the contrary in a trust instrument, whenever the instrument directs or permits investment in obligations of the United States government, the trustee has the power to invest in those obligations directly or in the form of securities or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, or an investment vehicle authorized for the collective investment of trust funds pursuant to section 9.18 of Title 12 of the Code of Federal Regulations, if:

(1) the portfolio of the investment company, investment trust, or investment vehicle is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(2) the investment company, investment trust, or investment vehicle takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

Section 114. **Deposits.** (1) The trustee has the power to deposit trust funds at reasonable interest with any of the following:

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(a) an insured commercial or savings bank;

(b) an insured building and loan association; or

(c) an insured credit union.

(2) A trustee may deposit trust funds as described in subsection (1) in a financial institution operated by, or that is an affiliate of, the trustee. For the purpose of this subsection, "affiliate" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another domestic or foreign corporation.

(3) This section does not limit the power of a trustee in a proper case to deposit trust funds in institutions as described in subsection (1) that are subject to notice or other conditions respecting withdrawal prescribed by law or governmental regulation.

(4) Nothing in this section prevents the trustee from holding an amount of trust property reasonably necessary for the orderly administration of the trust in the form of cash or in a checking account without interest.

Section 115. **Acquisition and disposition of property.** The trustee has the power to acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.

Section 116. **Management of property.** The trustee has the power to manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property or any interest therein.

Section 117. **Encumbrances.** The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

Section 118. **Repairs and alterations of property.** The trustee has the power to do any of the following:

(1) make ordinary or extraordinary repairs, alterations, improvements in buildings or other trust property;

(2) demolish any improvements; or

(3) raze existing or erect new party walls or buildings.

Section 119. **Development of land.** The trustee has the power to do any of the following:

(1) subdivide or develop land;

(2) dedicate land to public use;

(3) make or obtain the vacation of plats and adjust boundaries;

(4) adjust differences in valuation on exchange or partition by giving or receiving consideration; or

(5) dedicate easements to public use without consideration.

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Section 120. **Leases.** The trustee has the power to enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.

Section 121. **Mineral leases.** The trustee has the power to enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals, and to enter into a community oil lease or a pooling or utilization agreement, and for a term within or extending beyond the term of the trust.

Section 122. **Options.** The trustee has the power to grant an option involving disposition of trust property or to take an option for the acquisition of any property, and an option may be granted or taken that is exercisable beyond the term of the trust.

Section 123. **Voting rights with respect to corporate shares, memberships, or property.** With respect to any shares of stock of a domestic or foreign corporation, any membership in a nonprofit corporation, or any other property, a trustee has the power to do any of the following:

(1) vote in person and give proxies to exercise any voting rights with respect to the shares, memberships, or property;

(2) waive notice of a meeting or give consent to the holding of a meeting; or

(3) authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.

Section 124. **Payment of calls and assessments.** The trustee has the power to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.

Section 125. **Stock subscriptions and conversions.** The trustee has the power to sell or exercise stock subscription or conversion rights.

Section 126. **Consent to change in form of business — voting trusts.** The trustee has the power to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and to participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, to deposit securities with and transfer title and delegate discretions to any protective or other committee as the trustee may consider advisable.

Section 127. **Holding securities in name of nominee.** The trustee has the power to hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the security so held.

Section 128. **Insurance.** The trustee has the power to insure the property of the trust against damage or loss and to insure the trustee against liability with respect to third persons.

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Section 129. **Borrowing money.** The trustee has the power to borrow money for any trust purpose to be repaid from trust property.

Section 130. **Payment and settlement of claims.** The trustee has the power to do any of the following:

(1) pay or contest any claim;

(2) settle a claim by or against the trust by compromise, arbitration, or otherwise; or

(3) release, in whole or in part, any claim belonging to the trust.

Section 131. **Payment of taxes, trustee's compensation, and other expenses.** The trustee has the power to pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.

Section 132. **Loans to beneficiary.** The trustee has the following powers:

(1) to make loans out of trust property to the beneficiary on terms and conditions that the trustee determines are fair and reasonable under the circumstances; and

(2) to guarantee loans to the beneficiary by encumbrances on trust property.

Section 133. **Distribution to beneficiaries under legal disability.** The trustee has the power to pay any sum distributable to a beneficiary, without regard to whether the beneficiary is under a legal disability, by paying the sum to the beneficiary or by paying the sum to another person for the use or benefit of the beneficiary.

Section 134. **Nature and value of distributions.** The trustee has the power to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made pro rata or non-pro rata.

Section 135. **Hiring persons.** The trustee has the power to hire persons, including accountants, attorneys, auditors, investment advisors, or other agents, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

Section 136. **Execution and delivery of instruments.** The trustee has the power to execute and deliver all instruments which are needed to accomplish or facilitate the exercise of the powers vested in the trustee.

Section 137. **Actions and proceedings.** The trustee has the power to prosecute or defend actions, claims, or proceedings for the protection of trust property and of the trustee in the performance of the trustee's duties.

Section 138. **Short title.** [Sections 138 through 150] may be cited as the "Revised Uniform Principal and Income Act".

Section 139. **Definitions.** As used in [sections 138 through 150], the following definitions apply:

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(1) "Income beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income.

(2) "Inventory value" means the adjusted basis for federal income tax purposes.

(3) "Remainder beneficiary" means the person entitled to principal, including income which has been accumulated and added to principal.

(4) "Trustee" means the original trustee, any succeeding or added trustee, and the personal representative of a decedent's estate whenever a provision of this part is applicable to the estate.

Section 140. **Duty of trustee as to receipts and expenditures.** (1) A trust shall be administered with due regard to the respective interests of income beneficiaries and remainder beneficiaries. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each in any of the following ways:

(a) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of this part;

(b) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of this part; or

(c) if neither subsection (a) nor (b) is applicable, in accordance with the standard of care provided in [section 89] and with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal.

(2) If the trust gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference that the trustee has improperly exercised such discretion arises from the fact that the trustee has made an allocation contrary to a provision of this part.

Section 141. **Income — principal — charges.** (1) Income is the return in money or property derived from the use of principal, including return received as:

(a) rent of real or personal property, including sums received for cancellation or renewal of a lease;

(b) interest on money lent, including sums received as consideration for the prepayment of principal except as provided in [section 145] on bond premium and bond discount;

(c) income earned during administration of a decedent's estate as provided in [section 143];

(d) corporate distributions as provided in [section 144];

(e) accrued increment on bonds or other obligations issued at discount as provided in [section 145];

(f) receipts from business and farming operations as provided in [section 146];

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(g) receipts from disposition of natural resources as provided in [sections 147 and 148]; or

(h) receipts from other principal subject to depletion as provided in [section 149].

(2) Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainder beneficiary, while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes the following:

(a) consideration received by the trustee on the sale or other transfer of principal or a repayment of a loan or as a refund or replacement or change in the form of principal;

(b) proceeds of property taken on eminent domain proceedings;

(c) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(d) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in [section 144];

(e) receipts from the disposition of corporate securities as provided in [section 145];

(f) royalties and other receipts from disposition of natural resources as provided in [sections 147 and 148];

(g) receipts from other principal subject to depletion as provided in [section 149];

(h) any profit resulting from any change in the form of principal; or

(i) any allowances for depreciation established under [section 150(1)(b)].

(3) After determining income and principal in accordance with the terms of the trust instrument or of this part, the trustee shall charge to income or principal the expenses and other charges as provided in [section 150].

Section 142. **When right to income arises — apportionment of income.** (1) An income beneficiary is entitled to income from the date specified in the trust instrument or, if none is specified, from the date an item of property becomes subject to the trust. In the case of an item of property becoming subject to a trust by reason of a person's death, it becomes subject to the trust as of the date of the death of the person even though there is an intervening period of administration of the person's estate.

(2) Upon property becoming subject to a trust by reason of a person's death:

(a) Receipts due but not paid at the date of death of the person are principal.

(b) Receipts in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due at the date of the death of the person shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal and the balance is income.

(3) In all other cases, any receipt from income-producing property is income even though the receipt was earned or accrued in whole or in part before the date when the property became subject to the trust.

(4) On termination of an income interest, the income beneficiary whose interest is terminated, or his or her estate, is entitled to income:

(a) undistributed on the date of termination;

(b) due but not paid to the trustee on the date of termination; and

(c) in the form of periodic payments (other than corporate distributions to stockholders), including rent, interest, or annuities, not due on the date of termination, accrued from day to day.

(5) Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

Section 143. **Income earned during administration of decedent's estate.** (1) Unless the will otherwise provides and subject to subsection (2), all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, interest and penalties concerning taxes, family allowances, fees of attorneys and personal representatives, and court costs, shall be charged against the principal of the estate.

(2) Unless the will otherwise provides, income from the property of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under [sections 1 through 164] and distributed as follows:

(a) to specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration;

(b) to all other legatees and devisees, except legatees of pecuniary bequests not in trust, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income (excluding taxes on capital gains) that accrue during the period of administration, in proportion to their respective interests in the undistributed property of the estate computed at times of distribution on the basis of inventory value.

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(3) Income received by a trustee under subsection (2) shall be treated as income of the trust.

Section 144. **Corporate distributions.** (1) Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right, are principal.

(2) Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to any of the following:

(a) a call of shares;

(b) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(c) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

(3) Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

(4) Except as provided in subsections (1) through (3), all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions. Except as provided in subsections (2) and (3), if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

(5) The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this part concerning the source or character of dividends or distributions of corporate assets.

Section 145. **Bond premium and discount.** (1) Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (2) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

(2) The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is distributable

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as income. The increment in value is distributable to the beneficiary who was the income beneficiary at the time of increment from the first principal cash available or, if none is available, when realized by sale, redemption, or other disposition. Whenever unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

Section 146. **Business and farming operations.** (1) If a trustee uses any part of the principal in the continuance of a business of which the trustor was a sole proprietor or a partner, the net profits of the business, computed in accordance with recognized methods of accounting for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and may not be carried into any other fiscal or calendar year for purposes of calculating net income.

(2) Recognized methods of accounting for a comparable business shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

Section 147. **Disposition of natural resources.** (1) If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on, or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(a) If received as rent on a lease or extension payments on a lease, the receipts are income.

(b) If received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(c) If received as a royalty, overriding or limited royalty or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in subsections (1)(a) and (1)(b) shall be apportioned on a yearly basis in accordance with this paragraph whether or not any natural resource was being taken from the land at the time the trust was established. The receipts shall be allocated entirely to income or apportioned between income and principal as the trustee in its discretion may determine, but the amount added to principal as an allowance for depletion may not exceed the lesser of:

(i) the percentage of gross receipts allowed as a deduction for depletion in computing taxable income for federal income tax purposes or

(ii) 50% of the net receipts remaining after payment of expenses, direct and indirect, computed without allowance for depletion.

(2) This section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

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Section 148. **Timber.** If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with [section 140(1)(c)].

Section 149. **Other property subject to depletion.** Except as provided in [sections 147 and 148], if the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights, and rights to receive payments on a contract for deferred compensation, receipts from the property, not in excess of 5% per year of its inventory value, are income, and the balance is principal.

Section 150. **Charges against income and principal.** (1) The following charges shall be made against income:

(a) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including:

(i) regularly recurring taxes assessed against any portion of the principal;

(ii) water rates;

(iii) premiums on insurance taken upon the interests of the income beneficiary, remainder beneficiary, or trustee;

(iv) interest paid by the trustee; and

(v) ordinary repairs;

(b) a reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance may be made for depreciation on that portion of any real property used by a beneficiary as a residence or for depreciation of any property held by the trustee on July 1, 1983, for which the trustee was not then making an allowance for depreciation;

(c) not less than one-half of court costs, attorney fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(d) court costs, attorney fees, and fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(e) not less than one-half of the trustee's regular compensation, whether based on a percentage of principal or income, and all expenses reasonably incurred for current management of principal and application of income, unless the court directs otherwise; and

(f) any tax levied upon receipts defined as income under [sections 138 through 150] or the trust instrument and payable by the trustee.

(2) If charges against income are of unusual amount, the trustee may, by means of reserves or other reasonable means, charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

(3) (a) The following charges shall be made against principal:

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(i) trustee's compensation not chargeable to income under subsections (1)(d) and (1)(e);

(ii) special compensation of trustees;

(iii) expenses reasonably incurred in connection with principal, court costs, and attorney fees primarily concerning matters of principal; and

(iv) trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(b) charges not provided for in subsection (1), including:

(i) the costs of investing and reinvesting principal;

(ii) the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal;

(iii) expenses for preparation of property for rental or sale; and

(iv) unless the court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(c) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments, but a trustee may establish an allowance for depreciation out of income to the extent permitted by subsection (1)(b) and by [section 146];

(d) any tax levied upon profit, gain, or other receipts allocated to principal, notwithstanding denomination of the tax as an income tax by the taxing authority; and

(e) if an estate or inheritance tax is levied in respect to a trust in which both an income beneficiary and a remainder beneficiary have an interest, any amount apportioned to the trust, including interest and penalties, even though the income beneficiary also has rights in the principal.

(4) Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under [section 142].

Section 151. **Breach of trust.** A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust.

Section 152. **Trustee's liability to beneficiary for acts of agent.** (1) Except as provided in subsection (2), the trustee is not liable to the beneficiary for the acts or omissions of an agent.

(2) The trustee is liable to the beneficiary for an act or omission of an agent employed by the trustee in the administration of the trust that would be a breach of the trust if committed by the trustee under any of the following circumstances:

(a) whenever the trustee has the power to direct the act of the agent;

(b) whenever the trustee delegates to the agent the authority to perform an act that the trustee is under a duty not to delegate;

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(c) whenever the trustee does not use reasonable care in the selection of the agent or the retention of the agent selected by the trustee;

(d) whenever the trustee does not exercise proper supervision over the agent's conduct in a case where the trustee has the power to supervise the agent;

(e) whenever the trustee conceals the act of the agent; or

(f) whenever the trustee neglects to take reasonable steps to compel the agent to redress the wrong in a case where the trustee knows of the agent's acts or omissions.

(3) The liability of a trustee for acts or omissions of agents that occurred before October 1, 1989, is governed by prior law and not by this section.

Section 153. **Trustee's liability to beneficiary for acts of cotrustee.** (1) Except as provided in subsection (2), a trustee is not liable to the beneficiary for a breach of trust committed by a cotrustee.

(2) A trustee is liable to the beneficiary for a breach committed by a cotrustee under any of the following circumstances:

(a) whenever the trustee participates in a breach of trust committed by the cotrustee;

(b) whenever the trustee improperly delegates the administration of the trust to the cotrustee;

(c) whenever the trustee approves, knowingly acquiesces in, or conceals a breach of trust committed by the cotrustee;

(d) whenever the trustee negligently enables the cotrustee to commit a breach of trust; or

(e) whenever the trustee neglects to take reasonable steps to compel the cotrustee to redress a breach of trust in a case where the trustee knows or has information from which the trustee reasonably should have known of the breach.

(3) The liability of a trustee for acts or omissions of a cotrustee that occurred before October 1, 1989, is governed by prior law and not by this section.

Section 154. **Trustee's liability to beneficiary for acts of predecessor.** (1) Except as provided in subsection (2), a successor trustee is not liable to the beneficiary for a breach of trust committed by a predecessor trustee.

(2) A successor trustee is liable to the beneficiary for breach of trust involving acts or omissions of a predecessor trustee in any of the following circumstances:

(a) whenever the successor trustee knows or has information from which the successor trustee reasonably should have known of a situation constituting a breach of trust committed by the predecessor trustee, and the successor trustee improperly permits it to continue;

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(b) whenever the successor trustee neglects to take reasonable steps to compel the predecessor trustee to deliver the trust property to the successor trustee; or

(c) whenever the successor trustee neglects to take reasonable steps to redress a breach of trust committed by the predecessor trustee in a case where the successor trustee knows or has information from which the successor trustee should have known of the predecessor trustee's breach.

(3) The liability of a trustee for acts or omissions of a predecessor trustee that occurred before October 1, 1989, is governed by prior law and not by this section.

Section 155. **Remedies for breach of trust.** (1) If a trustee commits a breach of trust, or threatens to commit a breach of trust, a beneficiary or cotrustee of the trust may commence a proceeding for any of the following purposes that is appropriate:

(a) to compel the trustee to perform the trustee's duties;

(b) to enjoin the trustee from committing a breach of trust;

(c) to compel the trustee to redress a breach of trust by payment of money or otherwise;

(d) to appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

(e) to remove the trustee;

(f) subject to [section 210], to set aside acts of the trustee;

(g) to reduce or deny compensation of the trustee;

(h) subject to [section 210], to impose an equitable lien or a constructive trust on trust property; or

(i) subject to [section 210], to trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

(2) The provision of remedies for breach of trust in subsection (1) does not prevent resort to any other appropriate remedy provided by statute or the common law.

Section 156. **Remedies for breach exclusively in equity.** The remedies of a beneficiary against the trustee are exclusively in equity.

Section 157. **Measure of liability for breach of trust.** (1) If the trustee commits a breach of trust, the trustee is chargeable with any of the following that is appropriate under the circumstances:

(a) any loss or depreciation in value of the trust estate resulting from the breach of trust, with interest;

(b) any profit made by the trustee through the breach of trust, with interest; or

(c) any profit that would have accrued to the trust estate if the loss of profit is the result of the breach of trust.

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(2) If the trustee has acted reasonably under the circumstances as known to the trustee, the court, in its discretion, may excuse the trustee in whole or in part from liability under subsection (1) if it would be equitable to do so.

Section 158. **Measure of liability for interest.** If the trustee is liable for interest pursuant to [section 157], the trustee is liable for the greater of the following amounts:

(1) the amount of interest that accrues at the legal rate on judgments; or

(2) the amount of interest actually received.

Section 159. **Limitations on proceedings against trustee.** (1) Unless a claim is previously barred by adjudication, consent, limitation, or otherwise:

(a) If a beneficiary has received an interim or final account in writing, or other written report, that adequately discloses the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after receipt of the account or report. An account or report adequately discloses existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into the existence of the claim.

(b) If an interim or final account or other report does not adequately disclose the existence of a claim against the trustee for breach of trust, the claim is barred as to that beneficiary unless a proceeding to assert the claim is commenced within 3 years after the beneficiary discovered, or reasonably should have discovered, the existence of the claim.

(2) For the purpose of subsection (1), a beneficiary is considered to have received an account or report, as follows:

(a) in the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally;

(b) in the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the person's legal representative, including a guardian ad litem or other person appointed for this purpose; or

(c) in the case of a minor, if it is received by the minor's guardian or, if the minor does not have a guardian, if it is received by the minor's parent so long as the parent does not have a conflict of interest.

(3) The limitations period applicable to actions by a beneficiary against a trustee on a claim that arose before October 1, 1989, is governed by this section, except that a claim arising before October 1, 1989, is not barred by this section until October 1, 1990.

Section 160. **Exculpation of trustee.** (1) Except as provided in subsection (2), the trustee can be relieved of liability for breach of trust by provisions in the trust instrument.

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(2) A provision in the trust instrument is not effective to relieve the trustee of liability:

(a) for breach of trust committed intentionally, with gross negligence, or with reckless indifference to the interest of the beneficiary; or

(b) for any profit that the trustee derives from a breach of trust.

Section 161. **Nonliability for following instructions under revocable trust.** (1) Notwithstanding [section 160], a trustee of a revocable trust is not liable to a beneficiary for any act performed or omitted pursuant to written directions from the person holding the power to revoke, including a person to whom the power to direct the trustee is delegated.

(2) Subsection (1) applies to a trust that is revocable in part with respect to the interest of the beneficiary in that part of the trust property.

Section 162. **Consent of beneficiary to relieve trustee of liability for breach of trust.** (1) Except as provided in subsections (2) and (3), a beneficiary may not hold the trustee liable for an act or omission of the trustee as a breach of trust if the beneficiary consented to the act or omission before or at the time of the act or omission.

(2) The consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of the consent or of the act or omission;

(b) whenever the beneficiary at the time consent was given did not know of his rights and of the material facts that the trustee knew or should have known and that the trustee did not reasonably believe that the beneficiary knew; or

(c) whenever the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Whenever the trustee has an interest in the transaction adverse to the interest of the beneficiary, the consent of the beneficiary does not preclude the beneficiary from holding the trustee liable for a breach of trust under any of the circumstances described in subsection (2) or whenever the transaction to which the beneficiary consented was not fair and reasonable to the beneficiary.

Section 163. **Discharge of trustee's liability by release or contract.** (1) Except as provided in subsection (2), a beneficiary may be precluded from holding the trustee liable for a breach of trust by the beneficiary's release or contract effective to discharge the trustee's liability to the beneficiary for that breach.

(2) A release or contract is not effective to discharge the trustee's liability for a breach of trust in any of the following circumstances:

(a) whenever the beneficiary was under an incapacity at the time of making the release or contract;

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(b) whenever the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) whenever the release or contract of the beneficiary was induced by improper conduct of the trustee; or

(d) whenever the transaction involved a bargain with the trustee that was not fair and reasonable.

Section 164. **Discharge of trustee's liability by subsequent affirmance.** (1) Except as provided in subsection (2), if the trustee, in breach of trust, enters into a transaction that the beneficiary may at his option reject or affirm, and the beneficiary affirms the transaction, the beneficiary may not thereafter reject it and hold the trustee liable for any loss occurring after the trustee entered into the transaction.

(2) The affirmance of a transaction by the beneficiary does not preclude the beneficiary from holding a trustee liable for a breach of trust if, at the time of the affirmance, any of the following circumstances existed:

(a) the beneficiary was under an incapacity;

(b) the beneficiary did not know of his rights and of the material facts:

(i) that the trustee knew or reasonably should have known; and

(ii) that the trustee did not reasonably believe that the beneficiary knew;

(c) the affirmance was induced by improper conduct of the trustee; or

(d) the transaction involved a bargain with the trustee that was not fair and reasonable.

Section 165. **Subject matter jurisdiction.** (1) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has exclusive jurisdiction of proceedings concerning the internal affairs of trusts.

(2) The district court having jurisdiction over the trust pursuant to [sections 1 through 215] has concurrent jurisdiction of the following:

(a) actions and proceedings to determine the existence of trusts;

(b) actions and proceedings by or against creditors or debtors of trusts; and

(c) other actions and proceedings involving trustees and third persons.

Section 166. **Full-power court.** In proceedings concerning the internal affairs of trusts commenced pursuant to [sections 1 through 215], the court has all the powers of a district court exercising its general jurisdiction.

Section 167. **Principal place of administration of trust.** (1) The principal place of administration of the trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or its representative who is primarily responsible for the administration of the trust.

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(2) If the principal place of administration of the trust cannot be determined under subsection (1), it shall be determined as follows:

(a) if the trust has a single trustee, the principal place of administration of the trust is the trustee's residence or usual place of business; or

(b) if the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them. If not agreed upon by the cotrustees, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees.

Section 168. **Jurisdiction over trustees and beneficiaries.** Subject to [section 169]:

(1) by accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under [sections 1 through 215]; and

(2) to the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court under [sections 1 through 215].

Section 169. **Basis of jurisdiction over trust, trust property, and trust parties.** The court may exercise jurisdiction in proceedings under this division on any basis permitted by Rule 4 of the Rules of Civil Procedure.

Section 170. **Venue.** (1) The proper county for commencement of a proceeding pursuant to [sections 165 through 178] is either of the following:

(a) in the case of a living trust, the county where the principal place of administration of the trust is located; or

(b) in the case of a testamentary trust, either the county where the decedent's estate is administered or where the principal place of administration of the trust is located.

(2) If a living trust has no trustee, the proper county for commencement of a proceeding for appointing a trustee is the county where the trust property, or some portion of the trust property, is located.

(3) Except as otherwise provided in subsections (1) and (2), the proper county for commencement of a proceeding pursuant to [sections 1 through 215] is determined by the rules applicable to civil actions generally.

Section 171. **Jury trial.** There is no right to a jury trial in proceedings under [sections 1 through 215] concerning the internal affairs of trusts.

Section 172. **Application of part.** This part applies to notice in proceedings commenced pursuant to [sections 1 through 215] or notice otherwise required or permitted by [sections 1 through 215].

Section 173. **Manner of mailing — when mailing complete.** (1) If a notice or other paper is required or permitted to be mailed, it shall be sent by first-class mail.

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(2) Mailing is complete when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

Section 174. **Personal delivery instead of mailing.** If a notice or other paper is required or permitted to be mailed, it may be delivered personally to the person to whom it is required or permitted to be mailed.

Section 175. **Proof of giving notice — conclusiveness of order.** (1) Proof of the giving of notice shall be made at or before the hearing to the satisfaction of the court.

(2) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived, the court shall so find in its order. When the order becomes final, it is conclusive on all persons, whether or not in being.

Section 176. **Additional notice.** (1) The court may, on its own motion or on motion of a trustee or other person interested in the trust, require that further or additional notice be given at any state of the proceeding. The court may prescribe the form and method of the notice to be given.

(2) A petitioner or other person required to give notice may cause notice to be given to any person interested in the trust without the need for a court order.

Section 177. **Shortening time.** The court may for good cause shorten the time for giving a notice.

Section 178. **Notice of postponed hearings.** The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued or postponed hearing is required unless otherwise ordered by the court.

Section 179. **Petitioners — grounds for petition.** (1) Except as provided in [section 68], a trustee or beneficiary of a trust may petition the court under [sections 165 through 203] concerning the internal affairs of the trust or to determine the existence of the trust.

(2) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

(a) determining questions of construction of a trust instrument;

(b) determining the existence or nonexistence of any immunity, power, privilege, duty, or right;

(c) determining the validity of a trust provision;

(d) ascertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument;

(e) settling the accounts and passing upon the acts of the trustee, including the exercise of discretionary powers;

(f) instructing the trustee;

(g) compelling the trustee to report information about the trust or account to the beneficiary, if:

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(i) the trustee has failed to submit a requested report or account within 60 days after written request of the beneficiary; and

(ii) no report or account has been made within 6 months preceding the request;

(h) granting powers to the trustee;

(i) fixing or allowing payment of the trustee's compensation;

(j) appointing or removing a trustee;

(k) accepting the resignation of a trustee;

(l) compelling redress of a breach of the trust by any available remedy;

(m) approving or directing the modification or termination of the trust;

(n) approving or directing the combination or division of trusts;

(o) amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States internal revenue service, in any case in which all parties interested in the trust have submitted written agreement to the proposed changes or written disclaimer of interest;

(p) authorizing or directing transfer of a trust or trust property to or from another jurisdiction;

(q) directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another;

(r) approving removal of a testamentary trust from continuing court jurisdiction; or

(s) reforming or excusing compliance with the governing instrument of an organization pursuant to [section 104].

Section 180. **Commencement of proceeding.** (1) A proceeding under [sections 165 through 203] is commenced by filing a verified petition stating facts showing that the petition is authorized under this chapter and the grounds of the petition.

(2) When a petition that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

Section 181. **Dismissal of petition.** The court may dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary.

Section 182. **Notice.** At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

(1) all trustees;

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(2) all beneficiaries who are entitled to notice; and

(3) the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

Section 183. **Request for special notice.** (1) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, serve on the trustee or the trustee's attorney and file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in [section 179] and giving an address for receiving notice by mail. Proof of service of the request on the trustee shall be filed with the court clerk when the request is filed.

(2) Except as provided in subsection (3), after serving and filing a request and proof of service pursuant to subsection (1), the beneficiary is entitled to notice pursuant to [section 182].

(3) A request for special notice made by a beneficiary whose right to notice is restricted by [section 70] is not effective.

Section 184. **Request for copy of petition.** If a trustee or beneficiary has served and filed either a notice of appearance, in person or by counsel, directed to the petitioner or the petitioner's counsel in connection with a particular petition and proceeding or a written request for a copy of the petition, and has given an address to which notice or a copy of the petition may be mailed or delivered, the petitioner shall cause a copy of the petition to be mailed to that person within 5 days after service of the notice of appearance or receipt of the request.

Section 185. **Authority to make necessary orders — temporary trustee.** The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part.

Section 186. **Appeal.** An appeal may be taken from the grant or denial of any final order made under [sections 165 through 203], except the following:

(1) compelling the trustee to submit an account or report acts as trustee to a beneficiary pursuant to [section 179(2)(g)];

(2) accepting the resignation of a trustee pursuant to [section 179(2)(k)]; or

(3) approving removal of a testamentary trust from continuing court jurisdiction pursuant to [section 179(2)(r)].

Section 187. **Appointment of guardian ad litem.** (1) The court may, on its own motion or on request of a trustee or other person interested in the trust, appoint a guardian ad litem at any stage of a proceeding concerning the trust to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

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(a) a minor;

(b) an incapacitated person;

(c) an unborn person;

(d) an unascertained person;

(e) a person whose identity or address is unknown; or

(f) a designated class of persons who are not ascertained or are not in being.

(2) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(3) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of trust property or by the petitioner.

(4) If no guardian ad litem is appointed, an unborn person or an unascertained person is bound by an order to the extent his or her interest is adequately represented by another party having a substantially identical interest in the proceeding.

Section 188. **Intermittent judicial intervention in trust administration.** The administration of trusts is intended to proceed expeditiously and free of judicial intervention, subject to the jurisdiction of the court.

Section 189. **Enforcement of beneficiary's rights under charitable trust by attorney general.** In a case involving a charitable trust subject to the jurisdiction of the attorney general, the attorney general may petition under [sections 165 through 203].

Section 190. **Application of part.** (1) [Sections 190 through 195] apply to all of the following:

(a) a trust that is subject to [sections 1 through 215]; and

(b) any other trust to which the provisions of [sections 165 through 203] are made applicable by statute or trust instrument.

(2) [Sections 190 through 195] do not prevent the transfer of the place of administration of a trust or of trust property to another jurisdiction by any other available means.

Section 191. **Transfer of place of administration or property from Montana.** (1) The court may make an order for the transfer of the place of administration of a trust or the transfer of some or all of the trust property to a jurisdiction outside this state as provided in [sections 165 through 203].

(2) Except as otherwise provided in [sections 190 through 195], proceedings under [sections 165 through 203] are governed by [sections 190 through 195].

Section 192. **Contents of petition.** The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in this state; and

(b) the trustee, including any domiciliary trustee, who will administer the trust or trust property in the other jurisdiction;

(2) the names, ages, and places of residence of the living beneficiaries, as far as known to the petitioner;

(3) whether the trustee who will administer the trust in the other jurisdiction has agreed to accept the trust. If so, the acceptance or a copy shall be attached as an exhibit to the petition or otherwise filed with the court;

(4) a general statement of the qualifications of the trustee who will administer the trust in the other jurisdiction and the amount of fiduciary bond, if any. If the trustee is an individual, the statement shall include the trustee's age;

(5) a general statement of the nature and value of the property of any trust of the same trustor being administered in the other jurisdiction by the trustee who will administer the trust in the other jurisdiction;

(6) the name of the court, if any, having jurisdiction of the trustee in the other jurisdiction or of its accounts or in which a proceeding may be had with respect to administration of the trust or the trustee's accounts;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred;

(8) whether there is any pending civil action in this state against the trustee arising out of the administration of the trust sought to be transferred; and

(9) a statement of the reasons for the transfer.

Section 193. **Notice and hearing.** (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

Section 194. **Order granting transfer.** The court may, in its discretion, grant the petition and order the trustee to transfer the trust property or to transfer the place of administration of the trust to the other jurisdiction if, after hearing, all of the following appear to the court:

(1) the transfer of the trust property to a trustee in another jurisdiction, or the transfer of the place of administration of the trust to another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(2) the transfer will not violate the trust instrument; and

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(3) any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the trust instrument.

Section 195. **Manner of transfer — discharge of trustee.** If a transfer is ordered under this chapter, the court may direct the manner of transfer and impose terms and conditions as may be just, including, but not limited to, a requirement for the substitution of a successor trustee in any pending litigation in this state. The delivery of property in accordance with the order of the court is a discharge of the trustee in relation to all property embraced in the order.

Section 196. **Application.** (1) [Sections 196 through 203] apply to a trust, or portion thereof, administered in a jurisdiction outside this state.

(2) [Sections 196 through 203] do not prevent the transfer of the place of administration of a trust or trust property to this state by any other available means.

Section 197. **Transfer of place of administration or property to Montana.** (1) The court may make an order accepting the transfer of the place of administration of a trust from another jurisdiction to this state or the transfer of some or all of the trust property in another jurisdiction to a trustee in this state as provided in [sections 196 through 203].

(2) Except as otherwise provided in [sections 196 through 203], proceedings under [sections 196 through 203] are governed by this chapter.

Section 198. **Venue.** (1) If the petition requests that a resident of this state be appointed trustee, the petition shall be filed in the court of the county where the proposed principal place of administration of the trust pursuant to [section 167] is located.

(2) If the petition requests that only a nonresident of this state be appointed trustee, the petition shall be filed in the court of the county where either:

(a) any beneficiary resides; or

(b) a substantial portion of the trust property to be transferred is located or will be located.

Section 199. **Contents of petition.** The petition for transfer shall set forth all of the following:

(1) the names and places of residence of the following:

(a) the trustee administering the trust in the other jurisdiction; and

(b) the proposed trustee to whom administration of the trust or trust property will be transferred;

(2) the names, ages, and places of residence of all living beneficiaries, as far as known to the petitioner;

(3) whether administration of the trust has been subject to supervision in a jurisdiction outside this state. If so, the petition shall state whether a petition or appropriate request for transfer of place of administration of

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the trust or trust property to this state has been filed, if necessary, with the court in the other jurisdiction, and the status of the petition or request.

(4) whether the trustee proposed to administer the trust in this state has agreed to accept the trust in this state. If the trustee has agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(5) a general statement of the qualifications of the trustee proposed to administer the trust in this state and the amount of any bond to be requested. If the trustee is an individual, the statement shall include the trustee's age.

(6) a copy of the trust instrument or a statement of the terms of the trust instrument in effect at the time the petition is filed, including all amendments thereto;

(7) a statement of the character, condition, location, and value of the trust property sought to be transferred; and

(8) a statement of the reasons for the transfer.

Section 200. **Notice and hearing.** (1) At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of the hearing to be mailed to each of the persons named in the petition at their respective addresses as stated in the petition.

(2) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file written grounds in opposition to the petition.

Section 201. **Order accepting transfer and appointing trustee.** (1) The court may, in its discretion, grant the petition and issue an order accepting transfer of trust property or the place of administration of the trust to this state and appoint a trustee to administer the trust in this state, if, after hearing, all of the following appear to the court:

(a) the transfer of the trust property to a trustee in this state, or the transfer of the place of administration of the trust to this state, will promote the best interests of the trust and those interested in it, taking into account the interest in the economical and convenient administration of the trust;

(b) the transfer will not violate the trust instrument;

(c) the trustee appointed by the court to administer the trust in this state, and to whom the trust property is to be transferred, is qualified, willing, and able to administer the trust or trust property under the trust instrument; and

(d) the proper court in the other jurisdiction has approved the transfer if approval is necessary under the law of the other jurisdiction.

(2) If the court grants the petition under subsection (1), the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in [section 49].

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Section 202. **Conditional order accepting transfer.** If appropriate to facilitate transfer of the trust property or the place of administration of a trust to this state, the court may issue a conditional order appointing a trustee to administer the trust in this state and indicating that transfer to this state will be accepted if transfer is approved by the proper court of the other jurisdiction.

Section 203. **Administration of transferred trust.** A trust transferred to this state pursuant to [sections 165 through 203] shall be administered in the same manner as a trust of that type created in this state.

Section 204. **Personal liability of trustee to third persons on contracts.** (1) Unless otherwise provided in the contract or in [sections 165 through 203], a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the trustee's representative capacity or identify the trust in the contract.

(2) The personal liability of a trustee on a contract entered into before October 1, 1989, is governed by prior law and not by this section.

Section 205. **Personal liability of trustee arising from ownership or control of trust estate.** A trustee is personally liable for obligations arising from ownership or control of trust property only if the trustee is personally at fault.

Section 206. **Personal liability of trustee for torts.** A trustee is personally liable for torts committed in the course of administration of the trust only if the trustee is personally at fault.

Section 207. **Liability of dissenting cotrustee to third persons.** (1) A cotrustee who does not join in exercising a power held by three or more cotrustees is not liable to third persons for the consequences of the exercise of the power.

(2) A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the time the action is taken.

(3) This section does not excuse a cotrustee from liability for failure to discharge the cotrustee's duties as a trustee.

Section 208. **Assertion of claims against trust.** A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administration of the trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

Section 209. **Liability as between trustee and trust estate.** The question of liability as between the trust estate and the trustee personally may be determined in a proceeding under [section 179].

Section 210. **Protection of third person dealing with trustee.** With respect to a third person dealing with a trustee or assisting a trustee in the

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conduct of a transaction, if the third person acts for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(1) the third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise; and

(2) the third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

Section 211. **Application of property delivered to trustee by third person.** A third person is not bound to ensure the proper application of trust property paid or delivered to the trustee.

Section 212. **Protection of third person dealing with former trustee.** If a third person acting for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third person is fully protected just as if the former trustee were still a trustee.

Section 213. **Effects on real property transactions.** (1) This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of [sections 1 through 215] relating to the creation or validity of trusts. This section does not affect conveyances recorded prior to October 1, 1989.

(2) Except as otherwise provided in [sections 1 through 215], a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in [sections 1 through 215].

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance shall be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion

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thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his name and address and the date and circumstances of his succession, and confirming that he is currently lawfully serving in such capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest therein. A judgment is binding upon and conclusive against the trust and all persons interested therein as to all matters finally adjudicated in the judgment.

Section 214. **Creditor's rights against revocable trust during trustor's lifetime.** If the trustor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the trustor to the extent of the power of revocation during the lifetime of the trustor.

Section 215. **Creditor's rights against revocable trust after trustor's death.** Upon the death of a trustor who had retained the power to revoke the trust in whole or in part, the property that was subject to the power of revocation at the time of the trustor's death is subject to the claims of creditors of the decedent trustor's estate and to the expenses of administration of the estate to the extent that the decedent trustor's estate is inadequate to satisfy those claims and expenses.

Section 216. Section 2-2-103, MCA, is amended to read:

**"2-2-103. Public trust.** (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property, is liable to a beneficiary under *[section 77]*, and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty."

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Section 217. Section 31-2-209, MCA, is amended to read:

"**31-2-209. Assignment — when void.** An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

(1) if it gives a preference dependent upon any condition or contingency or with any power of revocation reserved;

(2) if it tends to coerce any creditor to release or compromise his demand;

(3) if it provides for the payment of any claim known by the assignor to be false or fraudulent or for the payment of more upon any claim than is known to be justly due from the assignor;

(4) if it reserves any interest in the assigned property or in any part thereof to the assignor or for his benefit, before all existing debts are paid;

(5) if it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust;

(6) if it exempts him from liability for neglect of duty or misconduct;

(7) if it violates *[section 77]*."

Section 218. Section 70-20-101, MCA, is amended to read:

"**70-20-101. Transfer to be in writing — statute of frauds.** No estate or interest in real property, other than an estate at will or for a term not exceeding 1 year can be created, granted, assigned, surrendered, or declared otherwise than by operation of law or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring it or by his lawful agent thereunto authorized by writing."

Section 219. Section 82-1-304, MCA, is amended to read:

"**82-1-304. Administration of the trust.** (1) The administration of the trust shall comply with the appropriate provisions regulating trusts contained in Title 72.

(2) No trustee or attorney fees may be paid from the trust proceeds.

(3) All bonuses, rental payments, royalties, and other income shall be paid to the trustee until the trust is terminated and notice of its termination given to all interested parties. The trustee shall distribute all money held in the trust to the person or persons entitled to it upon the order of the district court.

(4) A trust in favor of unlocatable owners shall be in force until the unlocatable owners of the mineral interest in question have successfully claimed the share of funds held in trust and filed the notice provided in 82-1-306.

(5) The trustee shall invest funds under his management in the manner of a prudent man, as *provided in [section 89]*. Fifty percent of the interest

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earned on each trust shall be credited to the general fund of the county in which the mineral interest is located to defray the costs of administration.

(6) Funds held in the trusts are subject to the provisions governing abandoned property contained in Title 70, chapter 9."

Section 220. **Repealer.** Sections 72-12-101 through 72-12-103, Title 72, chapters 20 through 25, sections 72-27-101 and 72-27-102, MCA, are repealed.

Section 221. **Codification instruction.** [Sections 1 through 215] are intended to be codified as an integral part of Title 72 and the provisions of Title 72 apply to [sections 1 through 215].

Approved May 18, 1989.

## CHAPTER NO. 686

[HB 398]

AN ACT CREATING A GENETIC ENGINEERING TECHNOLOGY RESEARCH AND DEVELOPMENT ACCOUNT FOR CERTAIN FUNDS APPROPRIATED OR CONTRIBUTED TO MONTANA STATE UNIVERSITY; AND APPROPRIATING MONEY TO MONTANA STATE UNIVERSITY TO PROVIDE ADDITIONAL SUPPORT FOR APPLIED GENETIC ENGINEERING TECHNOLOGY RESEARCH AND DEVELOPMENT TO ENHANCE MONTANA AGRICULTURAL PRODUCTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Genetic engineering technology research and development account created.** There is created in the current restricted subfund a restricted account for funds appropriated to Montana state university for applied genetic engineering technology research and development. Funds appropriated under [section 2] and money contributed by the Montana agriculture industry must be deposited in the account and are restricted to genetic engineering technology research and development only.

Section 2. **Appropriation.** (1) There is appropriated $160,000 from the renewable resource development bond fund established under 15-35-108(3)(e) to Montana state university for the biennium ending June 30, 1991, for the purpose of providing additional support for the applied genetic engineering technology research and development program at Bozeman.

(2) The appropriation made by this section may be used for research and development only. No administrative costs or other indirect costs of the program may be funded by this appropriation. The appropriation made by this section is contingent upon funds being available from the renewable resource development bond fund established under 15-35-108(3)(e) after all other appropriations from this source have been made.

Approved May 18, 1989.

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# CHAPTER NO. 687

[HB 496]

AN ACT TO ESTABLISH A MECHANISM FOR COORDINATED COMPUTER SYSTEM PLANNING IN THE LEGISLATIVE BRANCH; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, House Bill No. 65, the bill appropriating funds for the operation of the 51st Legislature and for startup costs for the 52nd Legislature, contains language stating that funds appropriated in the bill may be spent for the expansion or enhancement of computer equipment or systems only in accordance with a plan developed jointly by the several Legislative Branch agencies; and

WHEREAS, the appropriate application of computer technology in the Legislative Branch will enhance the ability of the Legislature to deliberate state policy through more timely delivery of higher quality legislative information, bills, and amendments; and

WHEREAS, there is no mechanism currently available whereby such a branchwide plan can be developed and implemented; and

WHEREAS, the establishment of a permanent mechanism for Legislative Branch planning is desirable, both to enhance service to the members of the Legislature and to promote effective and efficient systems that are economical and cost-effective.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Purpose.** It is the purpose of [this act] to establish a mechanism for computer system planning encompassing broad policy needs, long-term direction for computer use, and the effective implementation of a detailed plan for the legislative branch. It is the purpose of the plan to assure coordination of information system decisions so that the overall effectiveness of the senate, the house of representatives, and legislative agencies may be improved. It is the further purpose of the plan to enhance the coordination of legislative branch systems with executive branch systems wherever possible.

Section 2. **Legislative branch computer system planning council.** There is a legislative branch computer system planning council composed of:

(1) the secretary of the senate or another representative of the senate designated by the president;

(2) the chief clerk of the house of representatives or another representative of the house designated by the speaker;

(3) the sergeants-at-arms in the two houses or another representative of each house designated by the chairman of the legislative administration committee of that house;

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(4) the executive director of the legislative council, who shall chair the planning council;

(5) the legislative auditor;

(6) the legislative fiscal analyst;

(7) the executive director of the environmental quality council;

(8) the consumer counsel; and

(9) a person designated by the director of the department of administration to represent the data processing policy and planning functions of the department, who shall serve as a nonvoting member of the planning council.

Section 3. **Duties of legislative branch computer system planning council.** (1) The legislative branch computer system planning council shall develop and maintain a legislative branch computer system plan. In developing and maintaining this plan, the planning council shall:

(a) continuously review or have reviewed existing information systems that are candidates for automation or enhancement, as well as review existing automated systems that may be improved or integrated with new applications;

(b) develop and maintain a description of functions or services in the legislative branch and its agencies that would, through application or improvement of computer technology, provide better service to members of the legislature, legislative agencies, and the public;

(c) develop and maintain a ranking of needs, taking into consideration the relative effectiveness and probable cost of alternative systems; and

(d) develop and maintain recommended system standards for the legislative branch and standard or custom software and hardware solutions appropriate to the needs and environment of the legislative branch and its agencies.

(2) To the extent possible:

(a) future applications should be explicitly identified in the plan;

(b) current applications should allow a high degree of flexibility so that future applications are not limited; and

(c) both current and future applications should be coordinated and compatible with the standards and goals of the executive branch established under 2-17-501 through 2-17-503, as well as the legislative branch standards developed in accordance with the requirement in subsection (1)(d).

Section 4. **Technical support.** The executive director of the legislative council shall provide technical staff support to the legislative branch computer system planning council. In performing this duty, the legislative council staff shall assist the planning council by developing or having developed analyses of existing and alternate systems; providing technical solutions and advice related to the standards set by the planning council; assisting in assessing benefits and costs of optional solutions; apprising the

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planning council of developments and directions in the industry; maintaining a liaison with and informing the planning council of plans and directions within the executive branch; assisting in the selection and purchasing of supplies and equipment; and providing other assistance as may be requested. The executive director shall encourage participation of appropriate personnel of the senate, the house of representatives, and other legislative agencies in the provision of technical support.

Section 5. **Legislative branch computer system plan — adoption of standards.** The legislative branch computer system plan must be approved and adopted jointly by the legislative administration committees of the senate and the house of representatives.

Section 6. **Legislative branch systems — conformity to standards.** Computer hardware and software systems installed by the senate, the house of representatives, and legislative branch agencies must conform to standards established in the legislative branch computer system plan in effect at the time the purchasing decision is made.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved May 18, 1989.

## CHAPTER NO. 688

[HB 550]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE, ACTING AS LEAD AGENCY IN CONJUNCTION WITH OTHERS, TO PRESENT TO THE 52ND LEGISLATURE A PLAN FOR TOURIST WELCOMING AND INFORMATION CENTERS IN MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, travel and tourism are among Montana's leading industries and are steadily and rapidly increasing in importance in the Montana economy; and

WHEREAS, the competition among states and provinces to attract travelers and vacationers to scenic, recreational, and historic locations adds new dimensions to the efforts of each state and province to increase its share of the profits derived from this industry; and

WHEREAS, travel and tourism detract nothing from the attributes of Montana and the impact on the environment is negligible or subject to amelioration; and

WHEREAS, the Legislature intended that the proceeds of the lodging facility use tax enacted in 1987 be dedicated to the promotion of Montana's travel and tourism industries; and

WHEREAS, the Department of Commerce is charged with the responsibility of administering the uses of the proceeds of the lodging facility use tax; and

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WHEREAS, the Legislature finds that informing visitors to Montana of the many points of scenic interest, historical sites, and recreational opportunities awaiting them under the Big Sky promises benefits not only for the travel and tourism industry but also for all Montanans.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Department of commerce to present plan for welcoming and information centers.** (1) The department of commerce shall develop and present to the 52nd legislature on or before the second legislative day a plan for a system of up-to-date, technologically complete, and architecturally appropriate visitor welcoming and information centers to be located in Montana. The department shall act as the lead agency in preparing the plan, in cooperation with the university system travel research program, the department of highways, the department of fish, wildlife, and parks, the Montana state university school of architecture, and other appropriate agencies.

(2) The plan for welcoming and information centers must include:

(a) designation of the most beneficial and cost-effective sites;

(b) a determination of the land needed for the centers and the estimated cost of acquiring the land;

(c) architectural and artistic designs for the centers that are consistent with the state of the art and that provide for all services necessary to achieve the purposes of [this act];

(d) qualifications for personnel to staff the centers;

(e) suggestions for periods during each year when full or partial staffing and operation of the centers is needed; and

(f) a formal, documented proposal for funding the design, construction, maintenance, and operation of the centers.

Section 2. **Funding.** (1) Funding to implement [this act] must be provided from existing appropriations as follows:

(a) two-thirds by the university system from the special revenue fund in 15-65-121(1)(b); and

(b) one-third by the department of highways from the special revenue fund.

(2) Total planning costs may not exceed $49,000.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 18, 1989.

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# CHAPTER NO. 689

[HB 782]

AN ACT TO GENERALLY REVISE THE FORENSICS FUNCTIONS OF THE DEPARTMENT OF JUSTICE; ESTABLISHING A DIVISION OF FORENSIC SCIENCES; CLARIFYING THE AUTHORITY OF THE ATTORNEY GENERAL CONCERNING FORENSICS PERSONNEL; AMENDING SECTIONS 44-3-102, 44-3-104, 44-3-106, 44-3-201, 44-3-211, 44-3-301, AND 44-3-303, MCA; REPEALING SECTIONS 44-3-202, 44-3-212, AND 44-3-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 44-3-102, MCA, is amended to read:

"**44-3-102. Purpose.** The *purpose* of this chapter *is* to *authorize the attorney general to* provide the personnel, facilities, and procedures to*:*

*(1)* determine the cause of certain types of deaths by such investigation and examination as are in the public interest;

*(2)* analyze specimens for law enforcement officers; and

*(3)* provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest."

Section 2. Section 44-3-104, MCA, is amended to read:

"**44-3-104. Functions of department.** The forensics functions of the department of justice include operation of *a division of forensic sciences.*"

Section 3. Section 44-3-106, MCA, is amended to read:

"**44-3-106. Power of attorney general to employ personnel.** The attorney general is authorized to employ personnel necessary to perform the functions *authorized under* this chapter."

Section 4. Section 44-3-201, MCA, is amended to read:

"**44-3-201. State medical examiner.** A state medical examiner must be appointed by the attorney general. The state medical examiner *must be a physician licensed to practice medicine in Montana.*"

Section 5. Section 44-3-211, MCA, is amended to read:

"**44-3-211. Duties of state medical examiner.** The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this chapter;

(3) stimulating and directing research in the field of forensic pathology;

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(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

*(5) appointing associate medical examiners; and*

*(6) performing autopsies as requested.*"

Section 6. Section 44-3-301, MCA, is amended to read:

"**44-3-301. Laboratory of criminalistics.** (1) *There is a laboratory of criminalistics within the department of justice.* The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers and all state agencies and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory."

Section 7. Section 44-3-303, MCA, is amended to read:

"**44-3-303. Duties of laboratory director.** *There is a director of the laboratory of criminalistics.* The laboratory director shall:

(1) be responsible for supervision and direction of the laboratory;

(2) *assist the department in the appointment of* laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the department."

Section 8. **Repealer.** Sections 44-3-202, 44-3-212, and 44-3-304, MCA, are repealed.

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved May 18, 1989.

# CHAPTER NO. 690

[HB 159]

AN ACT TO ESTABLISH A FORMULA FOR DETERMINING THE AMOUNT THAT MUST BE PAID TO TRANSFER CREDITABLE SERVICE BETWEEN THE PUBLIC EMPLOYEES' AND THE TEACHERS' RETIREMENT SYSTEMS; TO INCLUDE SERVICE TRANSFERRED FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AS CREDITABLE SERVICE UNDER THE TEACHERS' RETIREMENT SYSTEM; AND AMENDING SECTIONS 19-3-511, 19-4-401, AND 19-4-409, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 19-3-511, MCA, is amended to read:

"**19-3-511. Transfer of service credits from teachers' retirement system.** (1) A member may at any time before his retirement make

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a written election with the board to qualify in the public employees' retirement system all of his creditable service in the teachers' retirement system. The amount that must be paid to the retirement system to qualify this service under *this section* is the sum of *subsections (2) and (3).*

*(2) The* teachers' retirement system *shall transfer to the public employees' retirement system* an amount equal to *5% of the average final compensation, as defined in 19-4-101, earned by the member multiplied by the total years of creditable service being transferred plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the teachers' retirement system. If the member had less than 3 full years of membership service, the average final compensation must be based on the compensation reported to the teachers' retirement board by the employer.*

*(3) (a) The* employee *shall pay an* amount *equal to* his accumulated contributions at the time he terminated active membership, as defined in 19-4-302, plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the *teachers'* retirement system.

*(b) If the sum of the rates provided in 19-3-701 and 19-3-801 exceeded the sum of the rates provided in 19-4-602 and 19-4-605 at the time the employee terminated active membership, as defined in 19-4-302, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:*

*(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided for in 19-3-701 and 19-3-801 and the sum of the rates provided in 19-4-602 and 19-4-605; plus*

*(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.*

*(c) If the member chooses not to make the contribution provided for in this section, he shall receive credit for the service transferred based on the ratio between the retirement systems' employee and employer contribution rates provided for in 19-3-701, 19-3-801, 19-4-602, and 19-4-605.*

(4) The amount of creditable service granted in subsection *(1)* must be on a month-by-month basis. Military service credit transferred from the teachers' retirement system must be included in the 5-year maximum military service credit provided for in 19-3-503.

(5) Subject to the provisions of 19-3-304, the board is the sole authority in determining the amount of creditable service qualified under *this section* and the amount paid to the retirement system under *subsections(2) and* (3).

(6) If a member who has creditable service in the teachers' retirement system dies before he qualifies this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit

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is the liability of the public employees' retirement system. Before payment of the death benefit, the teachers' retirement board must transfer to the public employees' retirement system the contributions necessary to qualify this service in the public employees' retirement system as provided in *subsections (2) and* (3)."

Section 2. Section 19-4-401, MCA, is amended to read:

**"19-4-401. Creditable service.** (1) The creditable service of a member begins on the date of his employment in a capacity prescribed for his eligibility in 19-4-302 and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service.

(2) The creditable service of a member includes the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that no credit may be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, and their subsequent amendments or under the provisions of 19-4-406;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 19-4-402;

(d) any service awarded for employment while on leave under 19-4-403;

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 19-4-404;

(f) any employment service awarded by the retirement board under the provisions of 19-4-408;

*(g) any service transferred after [the effective date of this act] from the public employees' retirement system under 19-4-409;*

*(h)* any service awarded by the retirement board for extension service employment under 19-4-410; and

*(i)* any service awarded for absence due to employment-related injury under 19-4-411.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service."

Section 3. Section 19-4-409, MCA, is amended to read:

**"19-4-409. Transfer of service credits from public employees' retirement system.** (1) A member may at any time before his retirement make a written election with the retirement board to qualify in the teachers' retirement system all of his creditable service in the public employees'

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retirement system. The amount that must be paid to the retirement system to qualify this service under *this section* is the sum of *subsections (2) and (3).*

*(2) The* public employees' retirement system *shall transfer to the teachers' retirement system* an amount equal to *5% of the final compensation, as defined in 19-3-104, earned by the member multiplied by the total years of creditable service being transferred plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the public employees' retirement system. If the member had less than 3 full years of membership service, the final compensation must be based on the compensation reported to the public employees' retirement board by the employer.*

*(3) (a) The* employee *shall pay an* amount *equal to* his accumulated contributions at the time he terminated active membership under 19-3-406 plus accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the *public employees'* retirement system.

*(b) If the sum of the rates provided in 19-4-602 and 19-4-605 exceeded the sum of the rates provided in 19-3-701 and 19-3-801 at the time the employee terminated active membership under 19-3-406, the employee shall pay an amount in addition to that required in subsection (3)(a) to receive full credit for the service transferred. This additional amount is equal to:*

*(i) the final compensation as determined in subsection (2) multiplied by the total years of creditable service being transferred multiplied by the difference between the sum of the rates provided in 19-4-602 and 19-4-605 and the sum of the rates provided in 19-3-701 and 19-3-801; plus*

*(ii) accrued interest from the date of termination until payment is received by the retirement system, based on the interest tables in use by the retirement system.*

*(c) If the member chooses not to make the contribution as provided in this section, he shall receive credit for the service transferred, based on the ratio between the retirement systems' employee and employer contribution rates provided for under 19-3-701, 19-3-801, 19-4-602, and 19-4-605.*

(4) A member who qualifies service from the public employees' retirement system in the teachers' retirement system must complete 5 years of membership service in the teachers' retirement system to qualify or purchase military service, out-of-state teaching service, employment while on leave, and private school employment.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If a member who has creditable service in the public employees' retirement system dies before he qualifies this service in the teachers' retirement system and if his service credits from both systems, when combined, entitle his beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer

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to the teachers' retirement system the contributions necessary to qualify this service in the teachers' retirement system as provided in *subsections(2) and* (3).

(7) If the retirement board determines that an individual's membership was erroneously classified, the member's accumulated contributions and service must be transferred to the teachers' retirement system and any employee and employer contributions due as calculated in *19-4-602 and 19-4-605* are the liability of the *employee and the* employing entity where the error occurred, *respectively.*"

Section 4. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved May 19, 1989.

## CHAPTER NO. 691

[HB 789]

AN ACT ACCEPTING THE POWER-TOBIN MANSION AS THE LEGISLATURE'S CENTENNIAL GIFT TO THE CITIZENS OF THE STATE OF MONTANA; AUTHORIZING THE SALE OF THE EXISTING GOVERNOR'S MANSION; PROVIDING THAT PROCEEDS OF THE SALE BE USED FOR RENOVATION AND MAINTENANCE OF THE POWER-TOBIN MANSION; PROVIDING FOR THE USE AND MAINTENANCE OF THE MANSION; ESTABLISHING A COUNCIL TO OVERSEE A RESTORATION PLAN; AND APPROPRIATING FUNDS TO DEFRAY RECORDING COSTS.

WHEREAS, the Power-Tobin Mansion, built in 1886, represents the economic, political, and cultural development within the Montana Territory that led to our statehood; and

WHEREAS, the Power-Tobin Mansion also represents the economic, political, and cultural maturity that Montana has achieved as a state; and

WHEREAS, the Queen Anne styling, the formal landscaping developed by Montana's own historic State Nursery and Seed Company, and the distinctive interior craftsmanship place the Power-Tobin Mansion among Montana's most architecturally important historic homes; and

WHEREAS, the Power-Tobin Mansion has welcomed many notable guests, including a young cowboy named Charlie Russell; and

WHEREAS, the former owners of the Power-Tobin Mansion, including Shirley Carter Ashby, Thomas H. Carter, Peter Larson, Charles Power, and Thomas Tobin, represent the best of political influence and economic initiative in Montana history; and

WHEREAS, the late Jane Power-Tobin has generously bequeathed the Power-Tobin Mansion to the State of Montana, conditioned upon its use

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as the official residence of the Governor or Lieutenant Governor for the next 25 years; and

WHEREAS, the private sector has begun to raise money and is encouraged and supported in its effort to raise money for the renovation and maintenance of the mansion.

THEREFORE, in this year of Montana's Centennial Celebration, the 51st Legislature finds it appropriate to accept, as the Legislature's Centennial gift to the citizens of the State of Montana, the gift of the Power-Tobin Mansion and to commit to its preservation and use as the official residence of the Governor or Lieutenant Governor.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Acceptance of Power-Tobin mansion — designation — use.** (1) The state of Montana accepts the bequest of the Power-Tobin mansion if sufficient private sector funding is obtained. The board of land commissioners shall manage the mansion for the state.

(2) The Power-Tobin mansion, located at 624 Dearborn Avenue, Helena, Montana, is the governor's centennial mansion. The mansion must be used for official ceremonial functions of the state and to provide suitable living quarters for the governor of the state.

Section 2. **Sale of executive mansion.** The board of land commissioners may sell the executive mansion located at 2 Carson Street, Helena, Montana, upon completion of the Tobin mansion renovation project. The proceeds of the sale must be deposited in an account in the capital projects fund. The funds in the account, including the interest and income earned on the account, must be used for the ongoing renovation and maintenance of the Power-Tobin mansion.

Section 3. **Maintenance.** The department of administration shall maintain the governor's centennial mansion in the same way as other state buildings are maintained and shall rehabilitate, decorate, and furnish the governor's centennial mansion. The decoration and furnishing must be guided by the governor's centennial mansion council.

Section 4. **Council — composition — duties.** (1) There is a governor's centennial mansion council. The council consists of the following five members:

(a) a designee of the governor;

(b) the director of the Montana historical society;

(c) the Montana state historic preservation officer;

(d) a representative of the Montana arts council appointed by the governor; and

(e) the administrator of the architecture and engineering division of the department of administration.

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(2) The members of the council shall serve without compensation. The council shall elect a chair and a secretary from among its members. The council terminates on June 30, 1993.

(3) The council shall develop an overall restoration plan for the governor's centennial mansion and surrounding grounds and shall approve alterations in the existing structure.

Section 5. **Gifts.** (1) In order to maintain and improve the quality of the furnishings of the public areas of the governor's centennial mansion, the council may solicit and accept on behalf of the Montana community foundation donated money, furnishings, objects of art, and other items the council determines may have historical value in keeping with the period and purpose of the governor's centennial mansion.

(2) The council may solicit contributions for the renovation of and capital improvements to the governor's centennial mansion.

(3) Gifts for the benefit of the governor's centennial mansion and surrounding grounds are not accepted by the state unless accepted by the council. The council shall maintain a complete inventory of all gifts and articles received.

Section 6. **Appropriation.** There is appropriated from the general fund $2 to the department of administration to defray the costs of recording the transfer of property with the Lewis and Clark County clerk and recorder. The department of administration is authorized to accept and expend private donations in an amount not to exceed $1 million, and such donations are appropriated for the purposes of [this act].

Approved May 18, 1989.

# CHAPTER NO. 692

[HB 200]

AN ACT CREATING THE MONTANA CHILD CARE ACT TO PROVIDE FOR A STATE PROGRAM FOR THE IMPROVEMENT OF CHILD CARE; PROVIDING FOR CHILD-CARE ASSISTANCE; CREATING A CHILD-CARE ADVISORY COUNCIL; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 52-1-103, 53-4-501, 53-4-502, 53-4-507, 53-4-511, AND 53-4-515, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] authorizes the department of social and rehabilitation services to adopt rules to administer a low-income day-care support program and a transitional child-care program.

It is the intent of the legislature that the department provide for day-care costs on a sliding-scale formula for low-income families in need of day-care for purposes of employment or employment-related training and

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provide a transitional child-care program for day-care for families who have ceased to receive aid to families with dependent children because of employment.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 12] may be cited as the "Montana Child Care Act".

Section 2. **Purpose.** (1) The legislature finds that the number of children living in homes where both parents work or in homes with a single parent who works has increased dramatically over the last decade.

(2) The legislature finds that the availability of quality child care is critical to the self-sufficiency and independence of Montana families, including the growing number of mothers who have young children and who work out of economic necessity.

(3) The legislature further finds that the number of quality child-care arrangements falls far short of the number required for children in need of child-care services.

(4) It is the intent of the legislature that the state promote day care for the purposes of:

(a) improving the quality of, and coordination among, child-care programs and providing additional resources for child-care services;

(b) promoting the availability and diversity of quality child-care services for all children and families that need such services;

(c) providing assistance to families whose financial resources are not sufficient to enable them to pay the full costs of necessary child-care services;

(d) ensuring that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child-care facility; and

(e) assisting people in finding and maintaining employment by lessening the stress related to the lack of adequate child care.

Section 3. **Lead agency — duties of department.** (1) The department is designated as the lead agency for the purposes of planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(b) develop a state child-care plan after consultation with the local youth services advisory councils established under 52-1-203 and the child-care advisory council established in [section 4]; and

(c) coordinate child-care programs administered by the department and the departments of social and rehabilitation services, health and environmental sciences, and labor and industry.

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(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part.

Section 4. **Child-care advisory council — membership.** (1) The governor shall appoint a child-care advisory council to assist the department in carrying out the responsibilities under [sections 1 through 12].

(2) The council is composed of not less than 10 members, including parents, child-care providers, representatives of state agencies involved in child care, and other persons interested in child care.

(3) The council shall:

(a) review and coordinate the statewide child-care plan; and

(b) advise the department on all child-care matters.

Section 5. **Resource and referral grant programs.** (1) There is a grant program established within the department for the allocation of grant money to local child-care resource and referral programs.

(2) The department may award grants to private nonprofit organizations and public organizations that demonstrate the ability to provide child-care resource and referral services.

(3) To be eligible for a grant from the department as a resource and referral agency for a local area, an organization:

(a) shall maintain a data base of child-care services in the community, including day-care facilities and preschools, that the organization continually updates;

(b) shall include on the staff of the organization at least one individual who has expertise in child development;

(c) shall have the capability to provide resource and referral services in the local area;

(d) must be able to respond to requests for information or assistance in a timely fashion;

(e) must be committed to providing services to all segments of the general public;

(f) must be able to provide parents with a checklist to identify quality child-care services;

(g) must be able to provide information on the availability of child-care subsidies;

(h) shall maintain and make available to the public a number of all referrals made by the resource and referral agency; and

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(i) shall otherwise satisfy regulations promulgated by the department pursuant to [sections 1 through 12].

Section 6. **Child-care assistance.** The department of social and rehabilitation services shall provide necessary child-care assistance, as provided for in sections 301 and 302 of the federal Family Support Act of 1988 [42 U.S.C. 602 (g)], for each individual participating in the program established under section 201 of the federal Family Support Act of 1988.

Section 7. Section 52-1-103, MCA, is amended to read:

**"52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;

(3) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(4) administer youth correctional facilities;

(5) provide supervision, care, and control of youth released from a state youth correctional facility;

(6) license youth care facilities, child placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for physically disabled persons, and adult foster care facilities;

*(7) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;*

*(8)* administer interstate compacts for children and delinquent youth;

*(9)* (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

*(10)* (a) make a written evaluation of each plan developed by the local youth services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;

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(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local youth services advisory councils;

*(11)* administer services to the aged;

*(12)* provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

*(13)* utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;

*(14)* subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;

*(15)* utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

*(16)* propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;

*(17)* contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

*(18)* adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529, and this chapter."

Section 8. Section 53-4-501, MCA, is amended to read:

**"53-4-501. Purpose — definitions.** (1) The purpose of this part is to assure that children requiring *day* care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

(2) In this part, the following definitions apply:

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(a) "Child" means a person under 12 years of age.

(b) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides *day* care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home. *The term* does not include:

*(i)* a person who limits care to children who are related to him by blood or marriage or under his legal guardianship; or

*(ii)* any group facility established chiefly for educational purposes.

(c) "Day-care center" means a place in which *day* care is provided to 13 or more children on a regular basis.

(d) "Department" means the department of family services provided for in 2-15-2401.

(e) "Day care" *or "child care"* means *less-than-24-hour out-of-home care for children, whether that care is for daytime or nighttime hours.*

*(f)* "Regular basis" means providing *day* care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

*(g)* "Family day-care home" means a private residence in which *day* care is provided to three to six children from separate families on a regular basis.

*(h)* "Group day-care home" means a private residence in which *day* care is provided to 7 to 12 children on a regular basis.

*(i)* "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify that he has complied with the prescribed standards and promulgated rules.

*(j)* "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

*(k)* "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day-care homes and group day-care homes.

*(l)* "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

*(m)* "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part."

Section 9. Section 53-4-502, MCA, is amended to read:

**"53-4-502. License required — registration required — term of license or registration certificate — no fee charged.** (1) No person, group of persons, or corporation shall:

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(a) establish or maintain a day-care center for children unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate shall set forth the ages and numbers of children for whom *day* care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) Licenses or registration certificates shall be issued for periods not to exceed 1 year. The department *may not* charge *a* fee to issue a license or registration certificate."

Section 10. Section 53-4-507, MCA, is amended to read:

**"53-4-507. Application for a license or registration certificate.** (1) Application for a license or registration certificate shall be made to the department in the county in which the applicant lives on forms prescribed by the department.

(2) Applications for a license or registration certificate by Indians residing on Indian reservations shall be made through the tribal governing body on forms prescribed by the department. Applications made through a tribal governing body shall be accompanied by a request by the tribal governing body that the department investigate to determine whether a license or registration certificate should be granted.

(3) Within 30 days of receipt of the application, the department shall determine whether a license or registration certificate should be issued."

Section 11. Section 53-4-511, MCA, is amended to read:

**"53-4-511. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department must visit and inspect at least *20%* of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

*(4) The department shall make annual unannounced visits to day-care centers.*

*(5)* Upon request of the department, the department of health and environmental sciences or the state fire marshal or his designee shall inspect

any day care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

*(6)* Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of his program.

*(7) Nothing in this section may be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part.*"

Section 12. Section 53-4-515, MCA, is amended to read:

"**53-4-515. Penalty — remedies.** (1) A person, group of persons, or corporation who establishes or maintains a day-care *facility* or assists in conducting or maintaining a day-care *facility* without first obtaining a license *or registration certificate* from the department as provided for in this part is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed $500.

(2) (a) If the department is advised or has reason to believe that a person, group of persons, or corporation is operating a day-care facility without a license or registration certificate, it shall make an investigation to ascertain the facts. If the department finds that the day-care facility is being or has been operated without a license or registration certificate, it may report the results of its investigation to the attorney general or the county attorney of the county where the day-care facility is being operated for prosecution and request that an injunction be issued against the facility until a license or certificate is issued.

(b) The department may institute any action necessary to enforce compliance with this part or any order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney or counsel, any county attorney, or the attorney general, initiate an action in the district court of the appropriate county and be represented by such representative on appeal to the supreme court of Montana."

Section 13. **Appropriation.** There is appropriated from the general fund to the department of family services $120,000 for the biennium to carry out the purposes of [section 5].

Section 14. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 15. **Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 53, chapter 4, part 5, and the provisions of Title 53, chapter 4, part 5, apply to [sections 1 through 6].

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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Section 17. **Effective date.** [Sections 1 through 5 and this section] are effective on passage and approval.

Section 18. **Termination date.** [Section 5] terminates June 30, 1991.

Approved May 19, 1989.

# CHAPTER NO. 693

[HB 280]

AN ACT TO ALLOW THE PARTIAL EXCLUSION OF PAYMENTS RECEIVED AS AN ANNUITY OR PENSION, INCLUDING PAYMENTS RECEIVED UNDER SOCIAL SECURITY, RAILROAD RETIREMENT BENEFITS, AND VETERANS' DISABILITY BENEFITS, FROM THE INCOME APPLICABLE TO THE RESIDENTIAL PROPERTY TAX RELIEF CREDIT AVAILABLE TO THE ELDERLY; AMENDING SECTION 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-30-171, MCA, is amended to read:

**"15-30-171. Residential property tax credit for elderly — definitions.** As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments *received* under federal social security.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

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(4) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(5) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(6) "Household income" means $0 or the amount obtained by subtracting *the greater of* $4,000 *or 50% of total retirement benefits* from gross household income, whichever is greater.

(7) "Homestead" means a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling.

(8) "Department" means the department of revenue.

(9) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's length transaction with the landlord.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies to taxable years beginning after December 31, 1988.

Approved May 22, 1989.

# CHAPTER NO. 694

[HB 529]

AN ACT TO REQUIRE COORDINATION OF PROGRAMS UNDER TITLE II-A OF THE FEDERAL JOB TRAINING PARTNERSHIP ACT WITH OTHER PROGRAMS TO ASSURE THE DELIVERY OF A COMPREHENSIVE, INTEGRATED RANGE OF NONDUPLICATIVE EMPLOYMENT AND TRAINING SERVICES TO ECONOMICALLY DISADVANTAGED PERSONS; AND TO PROVIDE AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is not required for this bill although included because [sections 7 and 8] require the private industry council in each service delivery area to develop performance standards to measure the effectiveness of programs administered under the federal Job Training Partnership Act.

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In developing performance standards, each private industry council shall consider the legislative findings and intent stated in [sections 1 and 2] and the requirements of [section 8]. In addition, each private industry council shall include in performance standards a measure of the extent to which programs under Title II-A of the Job Training Partnership Act increase the employment and earnings of public assistance recipients and the extent to which Job Training Partnership Act programs reduce expenditures for public assistance programs.

In order to determine whether performance standards are met, each private industry council shall monitor and evaluate the program, using random, representative, statistically valid sampling techniques, in each service delivery area on the basis of appropriate factors that must include the following:

(1) attainment of enrollment and placement goals for the program as determined by:

(a) the number of persons actually enrolled in the program during the program year as compared to the number planned for enrollment;

(b) the number of persons in subsection (1)(a) who are members of a specific target group;

(c) the number of persons who obtained a job placement as a result of participation in the program and the quality of such placements as determined based on the criteria established in subsection (2);

(d) the number of persons in subsection (1)(c) who are members of a specific target group;

(e) the number of persons who were unsuccessful in being placed in employment following completion of the program; and

(f) the number of persons who failed to complete the program, including the reasons for such failure and the point in time during participation in the program that the failure occurred;

(2) the quality of job placements as indicated by:

(a) the length of time that persons were retained in the original job placement, based upon followup of job placements in accordance with federal performance standards;

(b) the actual wages earned by each person upon placement in employment;

(c) the average wages of all persons receiving job placements; and

(d) the type of employment obtained by each person upon placement; and

(3) the number of persons who have ceased receiving public assistance as a result of participation in the program and the number who return or stay on public assistance despite enrollment and successful completion of the program, as calculated by the department of social and rehabilitation services using data provided by the department of labor and industry.

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It is intended that performance standards adopted under [sections 7 and 8] remain within the parameters established by the U.S. secretary of labor under section 106 of the federal Job Training Partnership Act (29 U.S.C. 1516) and that standards be consistent with federal requirements.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Legislative findings.** The legislature finds and declares that:

(1) many economically disadvantaged persons are unable to take their place in the economic mainstream of society because they lack the skills and training needed to obtain productive employment or to avoid long-term dependency on public assistance programs;

(2) existing state and federal employment and training programs, including the work incentive program, the work programs provided for in 53-3-304, and the programs administered under Title II-A of the Job Training Partnership Act, have proved to be a multiple, uncoordinated response to the needs of the economically disadvantaged; and

(3) a successful job training program will require a comprehensive, integrated range of nonduplicative employment and training services for economically disadvantaged persons that will result in economic self-sufficiency through placement of economically disadvantaged persons in long-term, sustainable employment.

Section 2. **Legislative intent.** Consistent with the findings in [section 1], it is the intent of the legislature to:

(1) establish and promote a system of employment and training programs responsive to the needs of economically disadvantaged persons;

(2) maximize resources by coordinating state employment and training programs under Title II-A of the Job Training Partnership Act with state work programs for public assistance recipients and other programs designed to prepare economically disadvantaged persons for employment; and

(3) assure cost-effective delivery of employment and training services to those most in need by requiring that programs under Title II-A of the Job Training Partnership Act be based on performance and by mandating legislative review of such programs.

Section 3. **Definitions.** For the purposes of [this act], unless the context requires otherwise, the following definitions apply:

(1) "Economically disadvantaged person" has the same meaning as provided in section 4 of the Job Training Partnership Act (29 U.S.C. 1503).

(2) "Job Training Partnership Act" means the federal Job Training Partnership Act of 1982, Public Law 97-300 (29 U.S.C. 1501, et seq.), as amended.

(3) "Job training plan" means the plan for providing services and training in a service delivery area, as required in [section 7].

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(4) "Program" means the program created by [section 4] to implement the provisions of Title II-A of the Job Training Partnership Act.

(5) "Program year" means the fiscal year beginning on July 1 of the year for which an appropriation is made for the program established under [this act], as provided in section 161 of the Job Training Partnership Act (29 U.S.C. 1571).

(6) "Public assistance program" means the state program of general relief assistance or aid to families with dependent children.

(7) "Service delivery area" means an area designated as provided in section 101 of the Job Training Partnership Act (29 U.S.C. 1511).

Section 4. **Establishment of program.** (1) There is a program to implement the provisions of Title II-A of the Job Training Partnership Act (29 U.S.C. 1601, et seq.). Except as provided in section 203 of the Job Training Partnership Act (29 U.S.C. 1603), the program must provide employment and training services to economically disadvantaged persons who are eligible to participate in the program.

(2) The program must be administered in accordance with a job training plan that meets the requirements of [sections 7 and 8] and sections 103 through 105 of the Job Training Partnership Act (29 U.S.C. 1513 through 1515).

Section 5. **State job training coordinating council.** (1) There is a state job training coordinating council. Members of the council must be appointed by the governor as required under section 122 of the Job Training Partnership Act (29 U.S.C. 1532).

(2) The state job training coordinating council shall perform the functions described in section 122 of the Job Training Partnership Act (29 U.S.C. 1532). The council shall also:

(a) recommend to the governor a statement of specific, measurable goals and objectives for employment and training services that must serve as guidelines for each private industry council in the development of a job training plan;

(b) recommend to the governor criteria for the coordination of employment and training programs as required under [section 9]; and

(c) review plans of all governmental agencies providing employment and training services and provide comments and recommendations to the governor, the state legislature, state agencies, and appropriate federal agencies concerning the relevancy and effectiveness of employment and training services provided in Montana.

Section 6. **Private industry councils.** (1) There is a private industry council in each service delivery area of the state. Each council must be established as required in section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

(2) Each private industry council shall carry out the duties and responsibilities provided in [section 7] and section 103 of the Job Training Partnership Act (29 U.S.C. 1513).

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Section 7. **Job training plan — requirements.** (1) Each private industry council shall prepare for the service delivery area a job training plan that has been prepared in accordance with [this act] and sections 103 through 105 of the Job Training Partnership Act (29 U.S.C. 1513 through 1515).

(2) Each job training plan must include:

(a) the council's priorities for services and groups to be served within the service delivery area;

(b) procedures to be used in identifying and selecting program participants and in determining and verifying their eligibility;

(c) the type of services and training to be provided, including the estimated cost per participant;

(d) criteria for evaluating the content and quality of services and training;

(e) performance standards as required under [section 8];

(f) procedures for selecting service providers as required under section 107 of the Job Training Partnership Act (29 U.S.C. 1517);

(g) a plan for the coordination of services and training with other programs as required in [section 9];

(h) a procedure for preparing and submitting to the governor and the legislature an annual report that describes the activities conducted in the service delivery area during the program year and the extent to which activities exceeded or failed to meet the performance standards adopted in the job training plan; and

(i) all other information required under section 104 of the Job Training Partnership Act (29 U.S.C. 1514).

Section 8. **Performance standards.** Each job training plan must contain performance standards to measure the effectiveness and operation of the program in the service delivery area. These standards must include a measure of the extent to which programs under Title II-A of the Job Training Partnership Act increase the employment and earnings of public assistance recipients and therefore reduce expenditures for public assistance programs.

Section 9. **Coordination of services.** The state job training coordinating council shall identify, in coordination with the appropriate state and local agencies, the employment, training, and vocational education needs throughout the state and assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state, and local programs and services represent a consistent, integrated, and coordinated approach to meeting such needs. In carrying out this coordinating function, the council shall consider state policy set forth in 2-15-101 to eliminate overlapping and duplication of services within state government and in accordance with the provisions of section 121 of the Job Training Partnership Act (29 U.S.C. 1531) and other employment and training programs, including:

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(1) programs operated under the federal Family Support Act of 1988; and

(2) programs and services of public assistance agencies, including the programs established in 53-3-304.

Section 10. **Review of job training plans.** At least 120 days before the beginning of the first of the 2 program years covered by the job training plan, the governor shall submit the proposed job training plan for review and comment to an appropriate standing committee of each house of the legislature, as required by 29 U.S.C. 1515, or, if the legislature is not in session, to an appropriate interim committee designated by the speaker of the house of representatives and the president of the senate.

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Modification of plans.** Any job training plan approved by the governor prior to [the effective date of this act] that is subject to the provisions of [this act] must be modified, as provided in section 104 of the Job Training Partnership Act (29 U.S.C. 1514), to comply with the provisions of [this act].

Section 13. **Effective date — applicability.** [Sections 1 through 9, 11, and 12] and this section are effective on passage and approval and apply to the job training plan for the 2 program years beginning July 1, 1989.

Approved May 22, 1989.

# CHAPTER NO. 695

[HB 567]

AN ACT AUTHORIZING A LOCAL GOVERNMENT TO MODIFY THE PERCENTAGES OF THE TAX BENEFIT FOR REMODELING, RECONSTRUCTION, OR EXPANSION OF BUILDINGS OR STRUCTURES; AND AMENDING SECTION 15-24-1501, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-24-1501, MCA, is amended to read:

**"15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations.** (1) *Subject to the authority contained in subsection (4), remodeling,* reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 ½% as determined by the department of revenue or its agents, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2)

*through (4)* and the following schedule. The percentages shall be applied as provided in *subsections* (3) *and (4)* and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

| | |
|---|---|
| Construction period | 0% |
| First year following construction | 20% |
| Second year following construction | 40% |
| Third year following construction | 60% |
| Fourth year following construction | 80% |
| Fifth year following construction | 100% |
| Following years | 100% |

(2) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of *the* incorporated city or town must approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) *or a schedule adopted pursuant to subsection (4).*

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. In no case may the benefit described in subsection (1) apply to statewide levies.

*(4) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Approved May 22, 1989.

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# CHAPTER NO. 696

[HB 752]

AN ACT ESTABLISHING A SOLID WASTE MANAGEMENT FEE FOR THE INCINERATION OR DISPOSAL OF SOLID WASTE TRANSPORTED BETWEEN REGIONS; PROVIDING FOR A WAIVER OF THE FEE WHEN THE INCINERATION OR DISPOSAL IS CONSISTENT WITH SPECIFIED CRITERIA; EXEMPTING EXISTING SOLID WASTE INCINERATION AND DISPOSAL FROM THE FEE; ESTABLISHING A SOLID WASTE MANAGEMENT ACCOUNT; ESTABLISHING SOLID WASTE MANAGEMENT REGIONS; PROVIDING PENALTIES FOR FAILURE TO PAY THE SOLID WASTE MANAGEMENT FEE; REQUIRING LOCAL APPROVAL FOR INCINERATION OR DISPOSAL OF SOLID WASTE GENERATED OUTSIDE THE REGION; ESTABLISHING A MORATORIUM ON TRANSPORT OF SOLID WASTE INTO MONTANA; PROVIDING A CIVIL PENALTY AND ADMINISTRATIVE ENFORCEMENT FOR VIOLATIONS OF SOLID WASTE DISPOSAL LAWS AND RULES; PROVIDING ADDITIONAL AIR QUALITY PERMIT REQUIREMENTS FOR CERTAIN SOLID WASTE INCINERATORS; AMENDING SECTIONS 75-10-104, 75-10-105, AND 75-10-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

## STATEMENT OF INTENT

It is the intent of the legislature that the department of health and environmental sciences adopt rules establishing procedures for the determination and collection of the solid waste management fee provided for in [section 1] and for the waiver of the fee when consistent with the criteria provided in [section 1(2)]. It is the intent of the legislature that the department be able to use this fee to bolster its solid waste management program in a manner, including the hiring of adequate staff, that will:

(1) protect the public health, welfare, and safety and the environment of Montana;

(2) provide assistance to local governments in meeting the pending federal solid waste management requirements;

(3) develop an effective and coordinated regional approach to solid waste management in Montana; and

(4) ensure a state and local capability to effectively manage the importation of solid waste into Montana for disposal purposes.

It is the intent of the legislature that the department of health and environmental sciences waive the fee for interregional solid waste incineration or disposal in situations where the incineration or disposal is consistent with state solid waste management goals and results in equivalent or improved protection of Montana's public health, safety, welfare, and environment when compared to the alternative of intraregional incineration or disposal. The incineration or disposal of solid waste at a licensed facility

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in the manner and quantity incinerated or disposed of before [the effective date of this act] is exempt from the solid waste management fee and from the requirement for local government approval under [section 6].

It is the intent of the legislature that the department of health and environmental sciences not issue an air quality permit for any new commercial incinerator of solid waste and not authorize any existing incinerator to change the amount, form, kind, or content of the material it incinerates or to incinerate any material that would change the nature, character, or composition of the emissions until the department and the public have necessary information to understand the composition and concentrations of the emissions and until the emissions and projected ambient concentrations are known to constitute a negligible risk to the public health, safety, and welfare and to the environment. For a permitted solid waste incinerator, the department shall consider an increase in the amount of medical waste incinerated as sufficient to trigger the additional permit and review requirements provided in [section 5], including consideration of emissions of hydrochloric acid, compounds deriving from plastic incineration, and other hazardous air pollutants.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Solid waste management fee.** (1) Except as provided in subsections (2) and (3), any person who owns an incinerator that burns more than 1,000 tons of solid waste a year or a solid waste disposal facility that is licensed pursuant to 75-10-221 and rules adopted under 75-10-221 and that disposes of more than 1,000 tons of solid waste a year shall pay to the department a quarterly fee of $1 for each ton of solid waste generated in a different region and incinerated or disposed of at the facility.

(2) The fee provided in subsection (1) must be waived if the department finds that the incineration or disposal is consistent with state solid waste management goals and results in equivalent or improved protection of Montana's public health, safety, welfare, and environment when compared to the alternative of intraregional incineration or disposal.

(3) The incineration or disposal of solid waste at a licensed facility in the manner and quantity incinerated or disposed of before [the effective date of this act] is exempt from the solid waste management fee.

(4) All fees collected must be deposited in the solid waste management account provided for in [section 2].

Section 2. **Solid waste management account.** (1) There is a solid waste management account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the solid waste management fee provided for in [section 1]; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source, intended to be used for the purposes of the account.

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(3) The account may be used by the department only for the administration of part 2, this part, and [section 5].

Section 3. **Solid waste disposal regions.** (1) There are six solid waste disposal regions, as follows:

(a) eastern Montana, consisting of Phillips, Garfield, Rosebud, and Powder River counties and all Montana counties east of these counties;

(b) northern Montana, consisting of Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole counties;

(c) south central Montana, consisting of Bighorn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone counties;

(d) southwestern Montana, consisting of Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Meagher, Park, Powell, and Silver Bow counties;

(e) northwest Montana, consisting of Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders counties; and

(f) all areas outside of Montana.

(2) The department shall assist and encourage persons involved in solid waste management to coordinate activities within each region in Montana to provide for the safe, efficient, and effective management of solid waste.

Section 4. **Penalties for failure to pay fee.** A person who owns a solid waste disposal facility subject to a fee under [section 1] and fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

Section 5. **Solid waste incineration — additional permit requirements.** (1) A person may not operate a solid waste incinerator of any of the following categories until the department has issued an air quality permit pursuant to this chapter, including the conditions provided in this section:

(a) a new commercial solid waste incinerator; or

(b) a permitted solid waste incinerator that would incinerate solid waste in an amount, form, kind, or content different from its permitted operation or that would incinerate any material that changes the nature, character, or composition of its emissions.

(2) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing incineration at the facility; and

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(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid waste as proposed in the permit application or modification;

(b) the public has had an opportunity to review and comment on the permit application or modification; and

(c) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment.

(3) The department shall require the application of air pollution control equipment, engineering, or procedures as necessary to satisfy the determination required under subsection (2)(c). The equipment, engineering, or procedures must provide particulate and gaseous emission reductions equivalent to or more stringent than those achieved through the best available control technology, in addition to any other controls necessary to satisfy the determination required under subsection (2)(c).

(4) This section does not relieve an owner or operator of a solid waste incinerator that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter.

Section 6. **Local approval required for incineration or disposal of solid waste generated outside the region.** (1) Except as provided in subsection (3), an owner or operator of a solid waste management facility who proposes to incinerate or dispose of solid waste generated outside the solid waste disposal region in which the facility is located shall, before receiving the waste, apply for and receive approval from the local government or governments having jurisdiction over the facility.

(2) The local government or governments may approve the incineration or disposal of solid waste from outside the region, if the local government or governments find that incineration or disposal of the solid waste is consistent with local and state solid waste management goals and results in equivalent or improved protection of public health, safety, welfare, and the environment within the jurisdiction.

(3) Local approval under this section is not required for the incineration or disposal of solid waste at a solid waste management facility in the manner and amount incinerated or disposed of before [the effective date of this act].

Section 7. **Moratorium on certain interstate transport of solid waste.** (1) The state of Montana recognizes the importance of providing for disposal or incineration of solid waste in a manner that protects Montana's public health, safety, welfare, and environment. Although the state of Montana also recognizes that, under appropriate conditions, the transportation of out-of-state solid waste into Montana may not conflict with this goal, it is imperative that the state undertake a legislative study of solid waste regulation and management, further develop regional and statewide solid waste management goals, plans, and regulations, and adopt rules implementing the solid waste management fee before allowing solid waste importation beyond current levels.

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(2) Except as provided in subsection (3), a person may not transport solid waste into Montana until October 1, 1991.

(3) A person who transported solid waste into Montana before [the effective date of this act] may continue to transport solid waste into Montana subject to the limitation that the amount he transports into Montana during any calendar year of the moratorium does not significantly exceed the amount he transported into Montana during calendar year 1988.

Section 8. **Administrative enforcement.** (1) When the department believes that a violation of part 1 or this part, a violation of a rule adopted under part 1 or this part, or a violation of a permit provision has occurred, it may serve written notice of the violation on the alleged violator or his agent. The notice must specify the provision of law, rule, or permit alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under part 1 or this part.

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

Section 9. **Civil penalties.** (1) A person who violates any provision of this part, a rule adopted under this part, or a license provision is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

Section 10. Section 75-10-104, MCA, is amended to read:

**"75-10-104. Duties of department.** The department shall:

(1) prepare a state solid waste management and resource recovery plan for submission to the board;

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(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

*(a)* governing the submission of plans for a solid waste management system;

*(b)* governing procedures to be followed in applying for and making loans;

*(c)* governing agreements between a local government and the department for grants or loans under this part;

*(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under [section 1], methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;*

*(e) providing procedures for the quarterly collection of the solid waste management fee provided for in [section 1]; and*

*(f) providing guidelines for a waiver of fees for certain incineration or disposal of solid waste, as provided for in [section 1(2)];*

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating a solid waste management system in order to insure that the system conforms to the state plan;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part; and

(8) approve plans for a proposed solid waste management system submitted by a local government."

Section 11. Section 75-10-105, MCA, is amended to read:

**"75-10-105. Powers of department.** The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;

(3) make grants for a local government for planning or implementation of a solid waste management system; *and*

*(4) collect the solid waste management fee provided for in [section 1].*"

Section 12. Section 75-10-214, MCA, is amended to read:

"**75-10-214. Exclusions — exceptions to exclusions.** (1) This part may not be construed to prohibit a person from disposing of his own solid waste *generated in Montana* upon land owned or leased by that person or covered by easement or permit as long as it does not create a nuisance or public health hazard.

(2) The exclusion contained in subsection (1) of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3."

Section 13. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 14. **Codification instruction.** (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 75, chapter 10, part 1, and the provisions of Title 75, chapter 10, part 1, apply to [sections 1 through 4].

(2) [Section 5] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 5].

(3) [Sections 6 through 9] are intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [sections 6 through 9].

Section 15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Effective date.** [This act] is effective on passage and approval.

Approved May 22, 1989.

## CHAPTER NO. 697

[HB 772]

AN ACT AUTHORIZING THE DEPARTMENT DESIGNATED BY THE GOVERNOR TO ADMINISTER THE FEDERAL SURPLUS PROPERTY PROGRAM TO RECEIVE A LOAN FROM THE GENERAL FUND; PROVIDING FOR REPAYMENT OF THE LOAN; PROVIDING AN APPROPRIATION; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Loan authorization — repayment.** (1) The department designated by the governor, pursuant to 18-5-201, to administer federal surplus property may receive during fiscal year 1990 a loan of $150,000 from

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the general fund for the purpose of administering the federal surplus property program.

(2) The loan authorized in subsection (1) must be repaid in five annual installments of $30,000 plus interest at 10% per year beginning in fiscal year 1990.

Section 2. **Appropriation.** There is appropriated from the proprietary fund $250,000 in fiscal year 1990 and $250,000 in fiscal year 1991 to the department designated by the governor under 18-5-201 to administer the federal surplus property program.

Section 3. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 18, chapter 5, part 2, and the provisions of Title 18, chapter 5, part 2, apply to [section 1].

Section 5. **Coordination.** If House Bill No. 691, including amendments to 18-5-201 authorizing the governor to designate a department to administer the federal surplus property program, is not passed and approved, [this act] is void.

Section 6. **Effective date.** [This act] is effective July 1, 1989.

Approved May 22, 1989.

# CHAPTER NO. 698

[HB 780]

AN ACT ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AUTHORITY TO ESTABLISH JUNK VEHICLE RULES NO LATER THAN JULY 1, 1990; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] grants rulemaking authority to the department of health and environmental sciences to implement the provisions of [this act]. It is the intent of the legislature that the department of health and environmental sciences adopt rules pertaining to the reuse and restoration of junk vehicles. The department shall adopt rules after consultation with counties, licensed motor vehicle wrecking facilities, and the general public.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Adoption of rules.** The department of health and environmental sciences shall, after seeking input from counties, licensed motor vehicle wrecking facilities, and the general public, adopt rules pertaining to

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the reuse and restoration of junk vehicles. The department shall adopt these rules no later than July 1, 1990.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved May 22, 1989.

# CHAPTER NO. 699

[HB 791]

AN ACT SUSPENDING DELINQUENT PROPERTY TAXES, PENALTIES, AND INTEREST FOR 36 MONTHS FOR PROPERTY TAXES LEVIED BY THE STATE OF MONTANA FOR A DOMESTICALLY INCORPORATED AIRLINE THAT HAS FILED A REORGANIZATION PLAN IN FEDERAL BANKRUPTCY; ALLOWING A LOCAL GOVERNMENT TO SUSPEND DELINQUENT PROPERTY TAXES, PENALTIES, AND INTEREST FOR A DOMESTICALLY INCORPORATED AIRLINE THAT HAS FILED A REORGANIZATION PLAN IN FEDERAL BANKRUPTCY; AMENDING SECTION 15-16-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Suspension of certain state taxes.** (1) Delinquent taxes, penalties, and interest for taxable years prior to 1988 are suspended for 36 months from [the effective date of this act] for an airline incorporated in Montana that has filed for chapter 11 bankruptcy before [the effective date of this act].

(2) The tax suspension provided by this section applies to property taxes levied under Title 15, chapter 10, 20-9-331, and 20-9-333.

(3) The repayment of all delinquent taxes, penalties, and interest suspended under subsection (1) must be included in the chapter 11 bankruptcy reorganization plan of the airline.

Section 2. **Suspension of certain local government taxes.** (1) The governing body of a county, consolidated government, or incorporated city or town may suspend for 36 months from [the effective date of this act] delinquent taxes, penalties, and interest for an airline described in [section 1] located within its jurisdiction for any of the taxable years provided in [section 1].

(2) Before a tax suspension may be granted, the governing body of a county, consolidated government, or incorporated city or town shall approve the tax suspension by resolution, after notice and hearing.

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(3) The tax suspension described in subsection (1) applies only to the number of mills levied for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion.

Section 3. Section 15-16-102, MCA, is amended to read:

**"15-16-102. Time for payment — penalty for delinquency.** *Except as provided in [sections 1 and 2], all* taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) If the taxes become delinquent, the county treasurer may accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest."

Section 4. **Contingent voidness.** If an airline that qualifies for the tax benefit contained in [sections 1 and 2] converts from a chapter 11 bankruptcy to a chapter 7 bankruptcy, [this act] is void.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved May 22, 1989.

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# CHAPTER NO. 700

[SB 80]

AN ACT ELIMINATING THE CATEGORY OF "OTHER SPECIAL REVENUE FUNDS" FROM THE STATE TREASURY FUND STRUCTURE; RECLASSIFYING OTHER SPECIAL REVENUE FUNDS AS STATE OR FEDERAL SPECIAL REVENUE FUNDS; AMENDING SECTIONS 17-2-102, 17-2-111, 17-3-1003, 20-26-1105, 53-24-104, 61-10-226, 75-7-306, 76-13-209, 80-11-203, 80-11-207, 80-11-210, 80-11-310, 81-8-610, AND 81-8-805, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 17-2-102, MCA, is amended to read:

**"17-2-102. Fund structure.** (1) There are in the state treasury only the following fund categories and types:

(a) governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type shall be subdivided for operational purposes into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state *and other nonfederal* sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government. *Other nonstate and nonfederal revenue deposited in the state special revenue account is not subject to the emergency budget amendment provisions of 17-7-403.*

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

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(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) pension trust fund type; and

(iv) agency fund type.

(d) the higher education funds, which include:

(i) the current fund, which accounts for moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system and vocational-technical centers. The financial activities of the current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

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(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for moneys deposited in the state treasury which may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system and vocational-technical centers;

(iii) the endowment fund, which accounts for moneys deposited in the state treasury by the Montana university system and vocational-technical centers wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the annuity and life income fund, which accounts for moneys deposited in the state treasury by the Montana university system and vocational-technical centers under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system or vocational-technical center binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system and vocational-technical centers for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for moneys deposited in the state treasury wherein the Montana university system or a vocational-technical center acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1) of this section, there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section; and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) of this section."

Section 2. Section 17-2-111, MCA, is amended to read:

**"17-2-111. Review of state special revenue accounts and proprietary accounts — report — transfer of funds.** (1) Each biennium,

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the department of administration shall examine all state special revenue accounts and proprietary accounts as required by this section and report the findings and recommendations to the legislative finance committee not later than June 1 of the year preceding a regular session of the legislature.

(2) The department shall examine restrictions against the transfer of unobligated balances in state special revenue accounts to the general fund. If such restrictions are considered unnecessary by the department and if they may be eliminated by administrative action, the department shall to the fullest extent possible eliminate such restrictions and require the transfer of unobligated balances in the accounts to be made to the general fund, either on an annual or biennial basis. If administrative action is unavailable, the department shall make recommendations for legislative action.

(3) The department shall examine all state special revenue accounts and proprietary accounts to determine if they should continue to exist or be eliminated or modified to provide better program operation or fiscal control. In conducting the examination, the department shall consider whether an account:

(a) is accurately classified as a state special revenue account or proprietary account;

(b) is required by the Montana constitution or by statute;

(c) operates in compliance with the statutes that established the program;

(d) receives an amount of revenue that is equal to or close to the expenditure required for the activity funded by the account;

(e) allows the funded program to operate without supplemental general funds; and

(f) has any restrictions against the transfer of unobligated balances in the account to the general fund."

Section 3. Section 17-3-1003, MCA, is amended to read:

**"17-3-1003. Support of state institutions.** (1) For the support and endowment of each state institution, there is annually and perpetually appropriated the income from all permanent endowments therefor and from all land grants as provided by law. All moneys received or collected in connection with such endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of such obligations or moneys which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

(2) All moneys received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state

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institution shall be deposited with the state treasurer of Montana for each of such institutions, to the credit of the *state* special revenue *fund.*"

Section 4. Section 20-26-1105, MCA, is amended to read:

"**20-26-1105. Guaranteed student loan account.** (1) There is a guaranteed student loan account within the *federal* special revenue *fund* provided for in 17-2-102.

(2) The board shall credit to the account established in subsection (1) all money designated for the guaranteed student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the guaranteed student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor, as provided for in this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the guaranteed student loan account shall not revert to the general fund at the close of any fiscal year."

Section 5. Section 53-24-104, MCA, is amended to read:

"**53-24-104. Deposit of funds from federal or private sources with state treasurer.** Funds available to the department from federal or private sources for use in chemical dependency prevention, treatment, and control programs shall be deposited with the state treasurer to the account of the department in the federal special revenue fund or the *state* special revenue *fund.*"

Section 6. Section 61-10-226, MCA, is amended to read:

"**61-10-226. Deposit of state highway money.** (1) Any reference to the state highway fund means the state highway account in the state special revenue fund.

(2) Money received for the use of the department from the receipt or transfer of GVW license fees, as provided by law, or from other state sources shall be deposited in the state special revenue fund to the credit of the department.

(3) Money received from the federal government or other agencies shall be deposited in a federal or *state* special revenue fund to the credit of the department.

(4) Money collected for the department as authorized by law shall be credited to such fund or funds by the state treasurer.

(5) Money received from the counties shall be deposited in the state special revenue fund to the credit of the department."

Section 7. Section 75-7-306, MCA, is amended to read:

"**75-7-306. Establishment of account.** There is established in *the state* special revenue fund a Flathead basin commission account. Money

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received by the Flathead basin commission under 75-7-305 and such other funds as are designated or appropriated for its use must be deposited in the account."

Section 8. Section 76-13-209, MCA, is amended to read:

**"76-13-209. Disposition of assessments.** All sums collected pursuant to 76-13-207 shall be promptly deposited in the *state* special revenue *fund.*"

Section 9. Section 80-11-203, MCA, is amended to read:

**"80-11-203. Compensation — per diem.** Members of the committee shall receive no salary but shall be paid from the wheat and barley account in the *state* special revenue *fund* a per diem of $25 for each day they are engaged in the transaction of official business, together with their actual and necessary travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while on official business."

Section 10. Section 80-11-207, MCA, is amended to read:

**"80-11-207. Buyer's delivery of invoice to grower — form — filing of sworn statement — payment of assessment — refund.** (1) The purchaser of the wheat or barley at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give separate invoices for each purchase to the grower. The invoices shall be on forms approved by the department and shall show:

(a) the name and address of the grower and seller;

(b) the name and address of the purchaser or the lender;

(c) the number of bushels of wheat or hundredweights of barley sold, mortgaged, or pledged;

(d) the date of the purchase, mortgage, or pledge and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within 20 days after the end of a month in which he purchases a grower's wheat or barley or in which a lender makes a loan or advance on a grower's wheat or barley, a sworn statement of the number of bushels of wheat or hundredweights of barley purchased in Montana or the number of bushels of wheat or hundredweights of barley mortgaged or pledged or otherwise transferred or liened as security for a loan during the preceding calendar month. At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in 80-11-206 for deposit in the wheat and barley account in the *state* special revenue *fund.*

(3) The statement referred to in subsections (1) and (2) of this section shall be legibly written and shall be entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender, the grower may, upon the submission of a written, verified request to the department, obtain a

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refund of the assessment. The request shall be accompanied by the original invoices received by the grower at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed 2 years after the refund is made. All original invoices shall be returned to the grower with the refund payment."

Section 11. Section 80-11-210, MCA, is amended to read:

**"80-11-210. Wheat and barley account — sources — use — expenditures.** (1) There shall be an account in the *state* special revenue *fund* known as the wheat and barley account. The following shall be placed in the account:

(a) the proceeds of all millage levies collected under this part; and

(b) the proceeds from all gifts, grants, or donations to the department for research authorized under this part.

(2) The account shall be maintained for the purposes of this part and shall be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat and barley account."

Section 12. Section 80-11-310, MCA, is amended to read:

**"80-11-310. Deposit and disbursement of funds — records — investment.** (1) As soon as possible after receipt, all money received by the department from the assessment levied under 80-11-307 and all other money received shall be deposited in the *state* special revenue *fund.*

(2) All money referred to in subsection (1) of this section may be used only for the payment of expenses incurred in carrying out the provisions of this part. The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121; however, the costs charged must have a substantial relationship to the cost of services supplied.

(3) Money received under this section, 80-11-312, and 80-11-313 not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2.

(4) Money received under this section, 80-11-312, and 80-11-313 is appropriated to the committee for the purposes of this part."

Section 13. Section 81-8-610, MCA, is amended to read:

**"81-8-610. Research and marketing account — sources — use — expenditures.** (1) The proceeds of all assessments made, paid, and collected under this part and the proceeds from all gifts, grants, or donations to the department of livestock for research authorized by this part shall be deposited in the *state* special revenue *fund* for the use of the committee as provided in this part.

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(2) The account shall be maintained for the purposes of this part and shall be separate and apart from all other accounts of the department.

(3) A percentage of all unrefunded assessments, determined by the committee, shall be paid to the national pork producer council.

(4) The committee may be assessed costs by the department for the services the department provides upon request of the committee or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of the services provided."

Section 14. Section 81-8-805, MCA, is amended to read:

**"81-8-805. Beef production research account — sources — use — expenditures.** (1) There is an account in the *state* special revenue *fund* known as the beef production research account. The following shall be placed in the account:

(a) the proceeds of all taxes collected under 81-8-804; and

(b) the proceeds from all gifts, grants, and donations to the department for activities authorized under this part.

(2) The account shall be maintained for the purposes of this part and shall be separate from all other accounts of the department.

(3) At least 20% of all contributions and unrefunded taxes received by the department shall be paid to the national livestock and meat board and at least 20% of such contributions and taxes shall be paid to the national beef industry council to carry out, on a national level, work and programs approved by the department.

(4) The beef production research account may be assessed costs by the department for services it provides in administering this part. The costs charged must have a substantial relationship to the cost of the services provided.

(5) Money deposited in the beef production research account pursuant to this section is appropriated to the department and must be used only for the purposes of this part."

Section 15. **Effective date.** [This act] is effective July 1, 1989.

Approved May 22, 1989.

# CHAPTER NO. 701

[SB 128]

AN ACT TO REVISE AND CONTINUE A JOB SEARCH, TRAINING, AND WORK PROGRAM FOR EMPLOYABLE RECIPIENTS OF GENERAL RELIEF ASSISTANCE; TO CLARIFY THE PURPOSE OF THE PROGRAM; TO APPROPRIATE FUNDS FOR ADMINISTRATION OF THE PROGRAM; AMENDING SECTION 53-3-304, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

It is the intent of the legislature, in enacting this bill, that the department of social and rehabilitation services revamp the current general relief

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work program provided for in 53-3-304 to make it a work-oriented program designed to help recipients of general relief obtain regular, sustainable employment.

The bill is intended to correct program deficiencies found in an audit requested by the joint interim subcommittee on welfare. The audit, which was conducted by the office of the legislative auditor, revealed that the current program is not achieving the purpose for which it was intended. The audit showed that:

(1) the current program does not enable general relief recipients to obtain permanent employment;

(2) the program only moderately increases the percentage of recipients who find employment;

(3) the program does not significantly reduce the general relief caseload; and

(4) overall, the program does not result in net savings to the state when reductions in welfare costs are compared to the costs of administering the program.

Thus, the legislature intends to provide for a revitalized work program for recipients of general relief. As reconceived, the program must include:

(1) intensive job search activity and prompt placements for recipients who are job ready, rather than remedial education, job training, or other activities that, although beneficial, are not necessary for recipients to find employment;

(2) a minimum 40-hour per week requirement for participation in program activities;

(3) a clear expectation that recipients must be employed at the end of the program. This expectation should be reinforced daily by program operators and should be communicated to each recipient upon enrollment in the program.

(4) participation in activities authorized under [section 10, Senate Bill No. 101] in lieu of participation in job search, training, and workfare activities otherwise required in 53-3-304;

(5) follow-up and monitoring of program performance; and

(6) prohibition of political activities under the program.

In addition, the program may include:

(1) remedial education and job skills training, but only if it is necessary for the recipient to become employed. Whenever possible, it is intended that services be provided through existing, local adult basic education programs and programs administered under the federal Job Training Partnership Act.

(2) active daily involvement of recipients in a combination of employment-related activities in order to enhance self-motivation and to increase job placement;

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(3) county workfare, but only in combination with other employment assistance, such as job search, job readiness training, remedial education, job training, and job placement services.

The department may limit the availability of services in subsections (1) through (3) of the preceding paragraph if such action is necessary as a result of budget limitations.

In redesigning the program, the department of social and rehabilitation services shall examine the policies and experience of work programs in other states, including the Utah emergency work program, which is a program that has operated at less than 10% of the cost of the Utah work incentive (WIN) program.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-3-304, MCA, is amended to read:

**"53-3-304. Power to require employable recipients to participate in job search, training, and workfare programs.** (1) The department shall initiate, promote, and develop job search, training, and *workfare* programs that will *provide employment, training, and work experience for* persons receiving general relief under the provisions of this chapter. These programs must be designed to:

*(a)* preserve and improve the work habits and skills of recipients for whom jobs are not otherwise immediately available*; and*

*(b) provide training and work experience that will enable recipients to find regular, sustainable employment.*

(2) For each county with state-assumed welfare services, the department shall institute *job search, training, and workfare programs as provided for in subsection (1).*

(3) *Except as otherwise provided in this chapter, in* a county with state-assumed welfare services, an *employable* recipient of general relief shall enroll in a structured job search and training program at an employment office or other site designated by the department. The program *may* include the following elements:

(a) assessment and testing;

(b) an employability plan;

*(c) a requirement that recipients participate for a minimum of 40 hours a week in a combination of activities, including workfare as provided in subsection (4), unless they are prevented, with good cause, from participating in such activities;*

*(d)* remedial education or job skills training, if it is called for in the employability plan and if it provides for immediate referral to an appropriate Job Training Partnership Act program;

*(e)* a job readiness and job search program that must include but is not limited to:

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(i) self-assessment and occupational testing;

(ii) instruction in completing applications, writing resumes, and preparing for interviews;

(iii) identification of and contact with potential employers;

(iv) participation in simulated job interviews; *and*

*(v) intensive job search activity and prompt placements for recipients who are ready to enter the work force;*

*(f)* a supervised effort to find employment;

*(g)* efforts to address barriers to employment;

*(h) an expectation that recipients must be employed at the end of the program; and*

*(i) follow-up and monitoring of program performance.*

(4) In addition to the training required in subsection (3), the county department of public welfare or the department of social and rehabilitation services may require a recipient to *participate in a workfare program. The purpose of the workfare program is to provide work experience and training for general relief recipients in specifically created work projects operated by a public agency or a private, nonprofit agency. A workfare program established under this section must provide that:*

*(a) A* currently employed worker may *not* be displaced by any recipient (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits).

*(b) A* recipient may *not* be *given a work experience or training assignment if:*

*(i) the assignment would fill an established unfilled vacancy that exists because an employee has been laid off;* or

*(ii)* the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy *with a general relief recipient.*

*(c) A recipient may not be required to participate in a workfare program if participation is determined to interfere with:*

*(i) participation in a job search or job training program; or*

*(ii) attendance in a secondary education program.*

*(d) The maximum number of hours that a recipient may be required to participate in a workfare program and job search and training programs may not exceed 40 hours in a week.*

(5) The county department of public welfare or the department of social and rehabilitation services, as the case may be, shall provide coverage under the Workers' Compensation Act for those recipients of general relief *participating in the workfare program* and may enter into such agreements

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with the division of workers' compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.

*(6)* Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the area where it is proposed to assign the recipient to *a workfare project*, an opportunity must be provided for that organization to submit comments with respect to such proposal.

*(7) A workfare* program may *not* impair existing contracts for services or collective bargaining agreements, and *a workfare* program that would be inconsistent with the terms of a collective bargaining agreement may *not* be undertaken without the written concurrence of the labor organization and employer concerned.

*(8) No program established under this section may include any political, partisan, or lobbying activities. The department shall deny funds to any program involved in such activities."*

Section 2. **Payment after performance.** (1) The department may by rule withhold general relief assistance or limit payments to shelter or personal needs until all employable members of the household have completed 2 full weeks in a structured job search, training, or workfare program as required in 53-3-304.

(2) A person is ineligible for assistance under subsection (1) if:

(a) the person fails to cooperate with the department in its investigation of eligibility; or

(b) the department's investigation during the 2-week period described in subsection (1) discloses that the person is ineligible to receive assistance.

Section 3. **Limitation of services.** (1) The department may limit the scope and availability of programs and services under 53-3-304 as may be necessary because of:

(a) the actual needs of an individual, as determined in accordance with an employability plan;

(b) funding limitations;

(c) service limitations;

(d) limitations caused by the lack of available employment in the area; and

(e) an insufficient number of recipients in an area to justify establishment of job search, training, and workfare programs.

(2) Recipients residing in areas where programs and services are restricted because of subsection (1) are exempt from mandatory participation in a job search, training, and workfare program.

Section 4. **Employability plan.** (1) The department shall develop or contract for the development of an employability plan for each participant enrolled in job search, training, and workfare programs provided for in 53-3-304.

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(2) The department may contract for assessment and testing if:

(a) it determines there is a need for assessment and testing in order to develop an employability plan; and

(b) funds are available for such services.

Section 5. **Transition-to-work allowance.** (1) As an alternative to the programs and services provided for in 53-3-304, the department may pay recipients a transition-to-work allowance. This allowance may be used only for relocation expenses for recipients who have obtained employment in another county or state.

(2) Notwithstanding any other provision of this chapter, a person who elects to receive the allowance provided for in subsection (1) is ineligible for general relief assistance for a period of 16 months.

Section 6. **Transportation assistance.** The department may provide necessary transportation or reimbursement of transportation costs for persons enrolled in job search, training, and workfare programs provided for in 53-3-304.

Section 7. **Performance standards — monitoring and evaluation of program.** (1) The department shall provide standards to measure the performance and effectiveness of the general relief job search, training, and workfare program provided for in 53-3-304. The standards must consist of an objective, quantifiable measure of the extent to which participation in the program increases the employment and earnings of participants and decreases their dependency on public assistance.

(2) In order to determine whether performance standards are met, the department shall monitor and evaluate the program on the basis of appropriate factors that must include the following:

(a) the placement of participants in unsubsidized employment;

(b) the retention of participants in unsubsidized employment;

(c) the increase in earnings, including hourly wages, of participants due to placement in unsubsidized employment;

(d) the reduction in the number of individuals and families receiving general relief; and

(e) the amount of reductions in payments for general relief.

(3) In monitoring and evaluating the performance of the program, the department shall determine the reasons for high and low levels of performance, administrative efficiencies, and program coordination.

Section 8. **Coordination requirements — consolidation of programs authorized.** (1) The governor shall assure that program activities under 53-3-304 are coordinated with programs administered under the federal Job Training Partnership Act and any other relevant employment, training, education, or work program in this state.

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(2) The governor may consolidate the program established in 53-3-304 with other programs in order to maximize coordination of program activities as required in subsection (1) and to prevent overlapping and duplication of services.

(3) Where adult basic education programs exist, remedial education services provided for in 53-3-304(3) must be coordinated, through contracts or cooperative agreements, with state or local agencies having responsibility for programs administered under the Adult Education Act, Public Law 100-297.

Section 9. **Audit.** The legislative auditor shall conduct a performance audit of the program provided in 53-3-304 and report the results of the audit to the 53rd legislature.

Section 10. **Appropriation.** The following money is appropriated to the department of social and rehabilitation services for the purpose of administering the job search, training, and work program provided for in 53-3-304 and [this act]:

| Fund | FY 90 | FY 91 |
|---|---|---|
| General fund | $ 832,265 | $ 832,265 |
| Federal special revenue | 1,055,235 | 1,055,235 |
| Total | $ 1,887,500 | $ 1,887,500 |

Section 11. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 12. **Coordination instruction.** If this bill and Senate Bill No. 101 are passed and approved, then [section 10, Senate Bill No. 101] is amended so language that reads: "a person who has a serious barrier to employment or who suffers from drug or alcohol dependency shall report to the agency designated pursuant to 53-3-304(2) to implement a job search, training, and work program" will read "a person who has a serious barrier to employment or who suffers from drug or alcohol dependency shall report to a job search, training, and workfare program".

Section 13. **Codification instruction.** [Sections 2 through 7] are intended to be codified as an integral part of Title 53, chapter 3, part 3, and the provisions of Title 53, chapter 3, part 3, apply to [sections 2 through 7].

Section 14. **Effective dates.** (1) [Sections 10 through this section] are effective July 1, 1989.

(2) [Sections 1 through 9] are effective January 1, 1990.

Approved May 22, 1989.

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# CHAPTER NO. 702

[SB 129]

AN ACT TO ENSURE THAT PARENTS FULFILL THE DUTY TO SUPPORT THEIR CHILDREN BY PROVIDING FOR A PRESUMPTIVE OBLIGATION OF SUPPORT IN CERTAIN LEGAL PROCEEDINGS; TO REQUIRE CONSIDERATION OF UNIFORM GUIDELINES TO ESTABLISH A MINIMUM SUPPORT LEVEL; TO REQUIRE PATERNITY CHILD SUPPORT ORDERS TO INCLUDE A PROVISION COVERING HEALTH INSURANCE IN CERTAIN CASES; TO PROVIDE FOR CHILD SUPPORT COLLECTION THROUGH AUTOMATIC INCOME WITHHOLDING; TO GRANT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES THE AUTHORITY TO CHARGE FEES IN CASES IN WHICH AN OBLIGOR'S FAILURE OR REFUSAL TO PAY SUPPORT REQUIRES THE DEPARTMENT TO ACT; TO TRANSFER TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FROM THE DEPARTMENT OF REVENUE THE AUTHORITY FOR CHILD SUPPORT ENFORCEMENT; AMENDING SECTIONS 39-71-743, 40-4-204, 40-4-209, 40-5-113, 40-5-202, 40-5-203, 40-5-208, 40-5-214, 40-5-241, 40-5-303, 40-5-401, 40-5-403, 40-5-404, 40-5-411 THROUGH 40-5-417, 40-5-422, 40-6-116, AND 53-2-613, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is needed for this bill because the department of social and rehabilitation services is required by [section 3] to adopt uniform child support guidelines for use by judges and other officials who have the power to determine child support awards within this state. The department initially shall adopt and promulgate the uniform child support guidelines recommended by the Montana supreme court at 44 State Reporter 828 (1987). Thereafter, the department shall periodically review those guidelines to determine if they are appropriate to determine adequate minimum child support amounts. If the department determines that the guidelines are no longer adequate, it shall amend them, after considering the factors set forth in 40-4-204(2) and 40-6-116(5).

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 40-4-204, MCA, is amended to read:

**"40-4-204. Child support — orders to address health insurance — automatic withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court *shall* order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct.

*(2) The court shall consider* all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and his educational *and medical* needs;

(e) the financial resources and needs of the noncustodial parent;

*(f) the age of the child;*

*(g) the cost of day care for the child;*

*(h) any custody arrangement that is ordered or decided upon; and*

*(i) the needs of any person, other than the child, whom either parent is legally obligated to support.*

*(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to [section 3], unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.*

*(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.*

*(c)* If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state *its* reasons for not ordering child support.

*(4)* Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

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(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

*(5) (a) Except as provided in subsection (5)(b), each district court judgment, decree, or order establishing a child support obligation under this title, whether temporary or final, and each modification of an existing child support order must:*

*(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and*

*(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.*

*(b) Income is not subject to automatic withholding if:*

*(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or*

*(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.*

*(c) When a judgment, decree, or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.*

*(d) When automatic income withholding is ordered under subsection (5)(a), the clerk of court shall immediately forward a copy of the order to the department.*

*(e) If an obligor is not subject to income withholding or is exempted from income withholding, the* district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

*(6) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without*

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*further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208."*

Section 2. Section 40-6-116, MCA, is amended to read:

**"40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) *(a)* The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

*(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.*

*(c)* The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) *(a)* Support judgments or orders ordinarily shall be for periodic payments which may vary in amount.

*(b)* In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

*(c)* The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, *including his medical needs*;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

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(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

*(j) the cost of day care for the child; and*

*(k) any custody arrangement that is ordered or decided upon.*

*(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to [section 3], unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.*

*(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.*

*(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.*

*(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:*

*(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.*

*(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.*

*(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.*

*(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.*

*(8) (a) Except as provided in subsection (8)(b), each district court judgment or order establishing a child support obligation under this part, whether temporary or final, and each modification of an existing child support order must:*

*(i) provide that the amount of child support must be withheld from the obligor's income and paid to the department pursuant to procedures established by the department under Title 40, chapter 5, part 4; and*

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*(ii) include the obligor's social security number and the name and address of the obligor's employer and of any other payor of income to the obligor.*

*(b) Income is not subject to automatic withholding if:*

*(i) the obligee or obligor demonstrates and the court finds that there is good cause not to require automatic income withholding; or*

*(ii) the obligee and obligor agree in writing to an alternative arrangement regarding the payment of child support that provides sufficient security to ensure compliance with their agreement. The security is in addition to the child support obligation.*

*(c) When a judgment or order for child support is entered or modified and automatic income withholding is ordered, an obligee who is not a recipient of public assistance shall apply for the support enforcement services of the department pursuant to Title IV-D of the Social Security Act for the collection of support through automatic income withholding under Title 40, chapter 5, part 4. The department shall accept the application. Pending an application, the department shall immediately implement automatic income withholding and hold any amounts collected in trust for the obligee until the obligee makes application.*

*(d) When automatic income withholding is ordered under subsection (8)(a), the clerk of court shall immediately forward a copy of the order to the department.*

*(9) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208."*

Section 3. **Child support guidelines — periodic review.** (1) The department shall adopt uniform child support guidelines to be used to determine minimum child support amounts. In addition to giving notice and publicizing the rules as provided in the Montana Administrative Procedure Act, the department shall give notice to the supreme court, the district courts, and the state bar of Montana prior to adopting the guidelines.

(2) The guidelines must consider the factors set forth in 40-4-204(2) and 40-6-116(5).

(3) At least once every 4 years, the department shall:

(a) review the uniform child support guidelines employed to determine child support obligations to ensure that their application results in the determination of appropriate child support award amounts; and

(b) propose any appropriate modification to the legislature.

Section 4. Section 40-5-214, MCA, is amended to read:

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"**40-5-214. Scale of suggested minimum contributions.** (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part. The scale *must be based on the uniform child support guidelines adopted by the department under [section 3].*

(2) Copies of the scale *must* be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the scale."

Section 5. **Payor and obligor notice.** (1) After a person is hired for employment, the payor shall submit to the person a written form inquiring whether the person owes child support that is required by law to be withheld from income according the terms of an order, if any, concerning child support. The person shall immediately complete, sign, and date the form and return it to the payor. The completed form must be retained by the payor for at least 3 years after the date of hiring or at least 1 year after the date that employment is terminated, whichever is longer.

(2) If a person discloses that he owes child support that is required to be withheld, the payor shall begin withholding according to the terms of the order and this part.

(3) At any time an obligor is subject to automatic income withholding, the obligor shall disclose to a payor that the obligor owes child support in order that the payor may begin withholding according to the terms of the order and this part. If the obligor does not make such disclosure, the failure to disclose may be considered a contempt of the district court.

(4) A payor may not inquire as to whether a prospective employee owes child support that is required by law to be withheld from income according to the terms of an order, if any, concerning child support, until employment has been offered and accepted.

Section 6. Section 40-5-401, MCA, is amended to read:

"**40-5-401. Short title.** This part may be cited as the "Child Support Enforcement Act"."

Section 7. Section 40-5-404, MCA, is amended to read:

"**40-5-404. Other remedies available.** The *remedies* provided in this part *are* in addition to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages."

Section 8. Section 40-5-411, MCA, is amended to read:

"**40-5-411. Income withholding.** (1) *If* an obligation for support is being enforced by the department pursuant to Title IV-D of the Social Security Act and the obligation has been established *as required by law* or administrative process, income due or to become due within this state to the obligor is subject to withholding procedures under this part *if:*

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*(a) except as provided in 40-4-204 and 40-6-116, a support obligation is initially decreed and ordered or modified after January 1, 1990, by a district court or administrative process, regardless of whether child support payments are in arrears; or*

*(b) the obligor is found to owe a combination of unpaid child support under a support order in an amount equal to or in excess of 1 month's support payment.*

(2) When the requirements of this part have been met, the department, without necessity for amendment of the support order or further order by a court or other entity, shall issue an order directing the obligor's employer or other payor to withhold and deliver to the department such amount of the obligor's income as will be sufficient to meet the support obligation imposed by the support order and to defray arrearages, *if any,* due when the withholding order takes place.

(3) The provisions for income withholding under this part take precedence over any other law or court order."

Section 9. Section 40-5-412, MCA, is amended to read:

**"40-5-412. Initiation of income withholding procedures.** (1) In *a* case *concerning a support obligation referred to in 40-5-411, the department shall immediately issue an order under 40-5-415 for the payment of current support.*

*(2) In any other case, the department shall monitor and track all support payments required by the support order. If at any time these records indicate that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support, the department shall commence proceedings to initiate withholding of the obligor's income as provided in this part.*

*(3)* To accomplish the purpose of subsection *(2)*, the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding any court order directing payments to be made to the obligee or clerk of court.

*(4)* Whenever an obligation for support is paid through the support enforcement and collections unit of the department, the department must forward payment to the obligee within 10 days of the department's receipt of payment from the obligor."

Section 10. Section 40-5-413, MCA, is amended to read:

**"40-5-413. Notice of intent to withhold income.** (1) Prior to service of an *initial* order *or a modification of an existing order on the payor under 40-5-415,* the department shall serve upon the obligor a notice of the intended action *if:*

*(a) the department previously has not issued an order to withhold and it has determined the obligor owes a combination of unpaid support equal to or in excess of 1 month's support;*

*(b) additional arrearages have accrued subsequent to the issuance of an order to withhold; or*

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*(c) immediate withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold.*

*(2)* The notice must contain a statement:

(a) of the amount to be withheld, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the obligor's right to a hearing under 40-5-414 to contest the implementation of income withholding *or modification of an existing order* on the ground that *the intended action* is not proper because of mistake of fact; and

(d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor *for the amount stated in the notice.*

*(3)* The notice must be served upon the obligor personally or by certified mail."

Section 11. Section 40-5-414, MCA, is amended to read:

**"40-5-414. Hearing.** (1) The obligor may within 10 days of being served with notice of the intended *action* under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) *In a case initiated because an arrearage has accrued or because additional income is to be withheld to satisfy additional arrearages and in which* the obligor requests a hearing within the time allowed, *the intended action* may not take effect until the conclusion of the hearing or the date of the hearing if the obligor fails to appear at a scheduled hearing.

(3) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(4) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearing examiner.

(5) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold income, and the fact that the obligor may have later paid the arrearage does not remove from the hearing examiner the authority to direct the department to order income withholding.

(6) *In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the* obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

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*(7) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation, the department shall proceed with the intended action in accordance with 40-5-415.*"

Section 12. Section 40-5-415, MCA, is amended to read:

"**40-5-415. Order to withhold income.** (1) *When the requirements of this part have been met,* the department shall immediately serve an order *or modification order* to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department; and

(d) state the rights and duties of the payor under this part.

(2) An order *or modification order* to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order *or modification order* to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors."

Section 13. Section 40-5-416, MCA, is amended to read:

"**40-5-416. Determination of amount of income to be withheld.** (1) *(a) Subject to the limitations* provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be the amount of money necessary to pay current installments of support as they become due and payable.

(b) *If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:*

*(i)* the amount of money *that,* when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; *or*

*(ii) 25% of the obligor's income.*

(c) *If income is being withheld to satisfy an arrearage, the department may allow* a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(2) The maximum amounts withheld from the obligor's wages or salaries may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b).

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(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages."

Section 14. Section 40-5-417, MCA, is amended to read:

**"40-5-417. Modification or termination of withholding orders.** (1) The department may at any time modify the order to withhold income to:

(a) reflect payment in full of the arrearages by income withholding or otherwise;

(b) recognize an increase or decrease in the support order; or

(c) indicate any other reason the amount to be withheld is to be reduced or changed.

*(2) If an arrearage occurs while the department is collecting an amount of money necessary to pay current installments of support as they become due and payable, the department may adjust the amount of income required to be withheld to also satisfy the arrearage, as provided in this part.*

*(3)* An income withholding order terminates only when the department is no longer authorized under the law to collect support or, when appropriate, services rendered under 40-5-203 have come to an end or when the obligation to pay support is terminated and all arrearages are paid in full, whichever occurs first."

Section 15. Section 40-5-203, MCA, is amended to read:

**"40-5-203. Support enforcement services.** (1) The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule reasonable standards necessary to limit applications for support enforcement services. These standards shall take into account the earnings, income, and other resources already available to support the person for whom a support obligation exists."

Section 16. **Standardized fee schedule.** (1) The department shall by rule establish a standardized schedule of fees for the recovery of administrative costs and expenses of child support enforcement. The fees may be recovered from an obligor if the obligor's failure or refusal to support a child makes it necessary for the department to provide child support enforcement services under this part. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(2) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee

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schedule as part of any judgment, decree, or order in which the department is the prevailing party.

(3) Fees awarded under this section are in the nature of child support and are collectible in the same manner as a support order. The fee award may be collected separately or added to and collected with any balance due on a support debt.

(4) Collection of a fee award may not reduce any current child support payment due the obligee.

(5) Arrearage amounts collected that include a fee must be allocated as follows:

(a) If the obligee is a recipient of public assistance, the amount must be allocated first to satisfy the fee.

(b) If the obligee is not a recipient of public assistance, the first 10% of each amount collected must be allocated to satisfy the fee.

(6) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

Section 17. Section 40-5-208, MCA, is amended to read:

**"40-5-208. Medical support — obligation enforcement — sanctions.** (1) *(a)* In all proceedings initiated pursuant to this part *to establish a child support order, whether final or temporary, and in each modification of an existing order,* the department shall require *the obligor* to *obtain* and maintain health insurance coverage for each child *if* health insurance *coverage* is available through *the obligor's* employment *or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.*

*(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:*

*(i) an order requiring the obligee to maintain health insurance coverage;*

*(ii) an agreement that the obligee will maintain health insurance coverage; or*

*(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.*

*(2) (a) If the department is providing child support enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation.*

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*(b) To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.*

*(3) (a) The department* may issue a notice commanding the *obligor* to appear at a hearing held by the department and show cause why a sum of not more than $100 should not be assessed for each month health insurance coverage is not secured or maintained *if the department determines an obligor has failed to:*

*(i) obtain or maintain health insurance coverage as required under this section; or*

*(ii) provide information required under this section.*

*(b)* If the department finds, after hearing or failure to appear, that health insurance coverage has not been *obtained* or maintained *or that the obligor has failed to provide the information required,* the department may assess against the obligated parent not more than $100 for each month health insurance coverage has not been *obtained* or maintained *or for each month information has not been provided.* Such amounts may be enforced by *any administrative remedy available to the department for the enforcement of child support obligations, including* warrant for distraint provided for in 40-5-241 *and income withholding provided for in Title 40, chapter 5, part 4.*

*(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.*

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 18. Section 40-5-422, MCA, is amended to read:

**"40-5-422. Obligor rights protected — penalties.** *(1) An* employer may *not* discharge, discipline, or refuse to hire an obligor*:*

*(a) because the person has a child support obligation; or*

*(b)* because of the institution of income withholding on the obligor's income or the initiation of proceedings under this part.

*(2)* Any person who violates this section may be fined not more than $500 and not less than $150 and may be required to make full restitution to the aggrieved obligor, including reinstatement and backpay."

Section 19. Section 39-71-743, MCA, is amended to read:

**"39-71-743. Assignment or attachment of payments.** (1) No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts, except:

(a) as provided in 71-3-1118; or

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(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated *by the department of social and rehabilitation services pursuant to [section 3]*; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. No fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 20. Section 40-4-209, MCA, is amended to read:

**"40-4-209. Security or guaranty to secure support.** (1) Upon verified application by a person authorized to enforce or collect a child support obligation the department of family services or the department of social and rehabilitation services showing that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that he post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring him to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

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(5) The department of *social and rehabilitation services* shall adopt guidelines which take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department of *social and rehabilitation services* determines an application for an order requiring security is not appropriate, it may not request the order."

Section 21. Section 40-5-113, MCA, is amended to read:

**"40-5-113. Officials to represent obligee.** If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, the department of family services, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Section 22. Section 40-5-202, MCA, is amended to read:

**"40-5-202. Department of social and rehabilitation services — powers and duties regarding collection of support debt.** (1) Whenever the department of social and rehabilitation services or the department of family services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of *the* child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly *take* action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to *ensure* that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

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(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court orders an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation applies both to:

(a) the lesser of the amount paid in public assistance to or for the benefit of a dependent child or children of the responsible parent or the amount of support contained in the court order; and

(b) to any amount allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce *the* rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 23. Section 40-5-303, MCA, is amended to read:

**"40-5-303. Petition for income deduction — who may initiate.** A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of family services or the department of social and rehabilitation services of the state of Montana."

Section 24. Section 40-5-403, MCA, is amended to read:

**"40-5-403. Definitions.** As used in this part, the following definitions apply:

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(1) "Department" means the department of *social and rehabilitation services* provided for in *2-15-2201*.

(2) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(3) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(4) "Obligor" means a person who owes a duty to make payments under a support order.

(5) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(6) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support."

Section 25. Section 53-2-613, MCA, is amended to read:

**"53-2-613. Application for assistance — assignment of support rights.** (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application shall be submitted, the manner and form prescribed by the department of social and rehabilitation services, and shall contain information required by the department of social and rehabilitation services.

(2) A person by signing an application for public assistance assigns to the state, the department of social and rehabilitation services, and to the

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county welfare department all rights the applicant may have to support and medical payments from any other person in his own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a support obligation *is* assigned to the department of social and rehabilitation services pursuant to this section, the following provisions apply:

(a) If such support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) No recipient or former recipient of public assistance may commence or maintain an action to recover a delinquent support obligation without notifying the department. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) No recipient or former recipient of public assistance may take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department of social and rehabilitation services, and the county welfare department."

Section 26. Section 40-5-241, MCA, is amended to read:

**"40-5-241. Warrant for distraint.** *(1)* Thirty-one days after receipt or refusal of notice of debt under provisions of 40-5-222 or 31 days after service of notice of debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue a warrant for distraint based on the amount of the support debt *plus penalty and fees, if any, and accumulated interest.*

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*(2) A warrant for distraint is an order, under the official seal of the department, directed to a sheriff of any county of Montana or to any agent authorized by law to enforce a district court judgment. The order commands the recipient to levy upon and sell the real and personal property of a delinquent obligor."*

Section 27. **Filing warrant with district court — effect of filing — release.** (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the delinquent obligor listed as the judgment debtor.

(2) Upon filing the warrant, there is a lien against all real and personal property of the delinquent obligor located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent child support and enforce the lien in the same manner as a judgment is enforced. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.

(3) (a) A copy of the filed warrant may be sent by the department to the sheriff or authorized agent. Upon receipt of a copy of the filed warrant, the sheriff or authorized agent shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A sheriff or agent shall return a warrant along with any funds collected within 90 days of the receipt of the copy of the warrant.

(c) If the warrant is returned not fully satisfied the department has the same remedies to collect the deficiency as are available for any civil judgment.

(4) (a) Upon receiving payment in full of the unpaid child support amount plus penalty and fees, if any, and accumulated interest, the department shall release the lien.

(b) Upon receiving partial payment of the unpaid child support amount or if the department determines that a release or partial release of the lien will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the lien acquired by filing the warrant for distraint. The department may release the lien if it determines that the lien is unenforceable.

(5) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts.

Section 28. **Name change — code commissioner instruction — reorganization procedure.** (1) (a) In 17-4-105(3)(d), 31-3-127, 40-5-201, and 40-5-205 the term "department of revenue" or "department", meaning the department of revenue, is changed to "department of social and rehabilitation services" or "department", meaning the department of social and rehabilitation services.

(b) The code commissioner is instructed to substitute the term "department of social and rehabilitation services" or "department", meaning the department of social and rehabilitation services, for the term "department

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of revenue" or "department", meaning the department of revenue, in legislation enacted by the 51st legislature relating to the enforcement of child support.

(2) The provisions of 2-15-131 through 2-15-137 govern the transfer of the authority for the child support enforcement function from the department of revenue to the department of social and rehabilitation services. It is intended that the current employees of the department of revenue whose functions are transferred to the department of social and rehabilitation services shall retain the employment rights consistent with their positions at the time of transfer.

Section 29. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 30. **Coordination.** If [this act] and Senate Bill No. 70 are both passed and approved, then the amendment to 40-4-204 in Senate Bill No. 70 is void.

Section 31. **Codification instruction.** [Sections 3, 16, and 27] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 3, 16, and 27]. [Section 5] is intended to be codified as an integral part of Title 40, chapter 5, part 4, and the provisions of Title 40, chapter 5, part 4, apply to [section 5].

Section 32. **Applicability.** [This act] applies to child support orders and modifications of child support orders issued after September 30, 1989.

Section 33. **Effective date.** [Sections 19 through 29 and this section] are effective July 1, 1989.

Approved May 22, 1989.

# CHAPTER NO. 703

[SB 130]

AN ACT TO REQUIRE THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO SEEK AN AGREEMENT WITH THE UNITED STATES SECRETARY OF HEALTH AND HUMAN SERVICES FOR THE PURPOSE OF ESTABLISHING A DEMONSTRATION PROGRAM TO TEST A POLICY THAT WOULD ALLOW RECIPIENTS OF THE AID TO FAMILIES WITH DEPENDENT CHILDREN-UNEMPLOYED PARENT PROGRAM TO WORK MORE THAN 100 HOURS IN A MONTH AND STILL RETAIN ELIGIBILITY FOR PUBLIC ASSISTANCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature in enacting this bill to establish a demonstration program that would allow individuals who, in the preceding month, qualified for the aid to families with dependent children-unemployed parent (AFDC-UP) program to work 100 hours or more in a month and still retain eligibility for public assistance, including medicaid.

Under current federal regulations, a recipient of the AFDC-UP program is prohibited from working 100 hours or more in any month, except if the

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work is intermittent. These regulations, which are found in 45 C.F.R. 233.100, exist to provide a definition of "unemployed parent" for purposes of eligibility under the AFDC-UP program.

This bill is intended to eliminate the work disincentives inherent in the current federal regulations and to encourage AFDC-UP recipients to work. The bill is not intended to expand eligibility for the AFDC-UP program to include persons who do not meet the current requirements for initial participation in the program.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Demonstration program — purpose.** (1) The department of social and rehabilitation services shall seek an agreement with the U.S. secretary of health and human services in order to establish a demonstration program as authorized under section 503 of the federal Family Support Act of 1988, Public Law 100-485.

(2) The purpose of the program under subsection (1) is to test a policy that would either eliminate or modify the requirements of 45 CFR 233.100 to allow unemployed recipients of aid to families with dependent children to work more than 100 hours in a month and still retain eligibility for public assistance.

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 22, 1989.

# CHAPTER NO. 704

[SB 132]

AN ACT TO GENERALLY REVISE THE COLLECTION OF DELINQUENT PROPERTY TAXES AND THE SALE OF TAX-DEED LAND BY THE COUNTY; PROVIDING FOR SALE OTHER THAN BY AUCTION IF NO BID IS RECEIVED AT TWO SALES; LENGTHENING THE NOTIFICATION PERIOD; CHANGING WHEN PROOF OF NOTICE MUST BE FILED BY THE COUNTY CLERK AND COUNTY TREASURER; ALLOWING THE PAYMENT OF CURRENT YEAR TAXES WITHOUT THE PAYMENT OF DELINQUENT TAXES; DEFINING THE TERM "COST" FOR PURPOSES OF TITLE 15, CHAPTERS 17 AND 18; REVISING THE AMOUNT TO BE PAID BY REDEMPTION; REVISING THE DISTRIBUTION OF REDEMPTION PROCEEDS; AMENDING SECTIONS 7-8-2301, 7-8-2304, 15-16-102, 15-17-121, 15-18-112, 15-18-114, 15-18-212, AND 15-18-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is not required for this bill but is included to make clear that the purpose of this bill is to clarify the provisions of Senate Bill

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No. 162 (Chapter 587, Laws of 1987), relating to partial payments of delinquent property taxes and to the procedures governing the sale of property for delinquent taxes.

In addition, this bill defines the term "costs", clarifies how redemption proceeds are distributed, requires a person who redeems property to pay the taxes and other charges that have been assessed since the date of the sale of the tax lien, revises the method by which county tax-deed land is sold, lengthens the notification period prior to issuing a tax deed, changes the time when proof of notice must be filed, and clarifies the effect of the tax deed.

In 1987, the legislature enacted 15-16-102(5) authorizing the partial payment of delinquent property taxes. The attorney general in 42 Attorney General Opinion opined, however, that a partial payment made pursuant to 15-16-102(5) does not toll the redemption period. In order to redeem the property, the attorney general stated that the taxpayer had to pay all of the delinquent taxes, including penalty and interest, plus all subsequently assessed taxes.

The intent of this bill is to reverse the attorney general's opinion. It is the intent of the legislature that each tax year for which property taxes are delinquent has a separate 36- or 18-month redemption period. If a partial payment is made for a particular tax year, a tax deed may not be issued based on that tax year because the taxes for that year have been paid.

For example, assume that the 1984, 1985, 1986, 1987, and 1988 property taxes are delinquent. Assume further that a 36-month redemption period applies to the property on which the taxes have not been paid. In February 1989, the current year, as that term is used in 15-16-102(5), is the 1988 tax year for which taxes are due on November 20, 1988, and May 31, 1989. The 36-month redemption period has expired for 1984, and it will expire for the 1985 taxes in the summer of 1989. This bill contemplates that a taxpayer may pay his 1988 taxes, even though the first half is delinquent. After the 1988 taxes are paid, the taxpayer may redeem the property for the 1984 tax year by paying the 1984 taxes.

The taxpayer may still lose his property unless he pays his 1985 taxes before the tax deed is issued. Because the current year and the most delinquent year are paid, the taxpayer may redeem the property for the 1985 tax year by paying the 1985 taxes.

In 1990, the taxpayer would have to pay the 1989 taxes before he could pay the 1986 taxes to redeem the property for the 1986 tax year. Following this pattern, the taxpayer would be current on all taxes after 3 years.

As used in this statement of intent, taxes include penalty, interest, and costs.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-16-102, MCA, is amended to read:

**"15-16-102. Time for payment — penalty for delinquency.** All taxes levied and assessed in the state of Montana, except assessments made

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for special improvements in cities and towns payable under 15-16-103 and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) *A taxpayer may pay his current year taxes without paying delinquent taxes. The* county treasurer *must* accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest. *The payment of the current tax year is not a redemption of the property tax lien for any delinquent tax year.*"

Section 2. Section 15-17-121, MCA, is amended to read:

**"15-17-121. Definitions.** Except as otherwise specifically provided, when terms mentioned in Title 15, chapters 17 and 18, are used in connection with taxation, they are defined in the following manner:

(1) "Certificate" or "tax sale certificate" means the document described in 15-17-212.

*(2) (a) "Cost" means the cost incurred by the county as a result of a taxpayer's failure to pay taxes when due. It includes but is not limited to any actual out-of-pocket expenses incurred by the county plus the administrative cost of:*

*(i) preparing the list of delinquent taxes;*

*(ii) preparing the notice of pending tax sale;*

*(iii) conducting the tax sale;*

*(iv) assigning the county's interest in a tax lien to a third party;*

*(v) identifying interested persons entitled to notice of the pending issuance of a tax deed;*

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*(vi) notifying interested persons;*

*(vii) issuing the tax deed; and*

*(viii) any other administrative task associated with accounting for or collecting delinquent taxes.*

*(b) Cost does not include the costs incurred by the owner of a property tax lien other than the county.*

*(3)* "County" means any county government and includes those classified as consolidated governments.

*(4)* "Property tax lien" means a lien acquired by the payment at a tax sale of all outstanding delinquent taxes, including penalties, interest, and costs.

*(5)* "Purchaser" means any person, other than the person to whom the property is assessed, who pays at the tax sale the delinquent taxes, including penalties, interest, and costs, and receives a certificate representing a lien on the property or who is otherwise listed as the purchaser. An assignee is a purchaser.

*(6)* "Tax", "taxes", or "property taxes" means all ad valorem property taxes, property assessments, fees related to property, and assessments for special improvement districts and rural special improvement districts.

*(7)* "Tax sale" means:

(a) with respect to real property and improvements, the offering for sale by the county treasurer of a property tax lien representing delinquent taxes, including penalties, interest, and costs; and

(b) with respect to personal property, the offering for sale by the county treasurer of personal property on which the taxes are delinquent or other personal property on which the delinquent taxes are a lien."

Section 3. Section 15-18-114, MCA, is amended to read:

**"15-18-114. Distribution of redemption proceeds.** (1) When a property tax lien for which the county is listed as purchaser is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a property tax lien for which the recorded purchaser is other than the county is redeemed, *the county treasurer shall distribute* to the person listed as the purchaser on the tax sale certificate and in the record kept by the county treasurer *the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any . ·ey remaining after distributing redemption proceeds to the purchaser oth·.· than the county must be distributed pursuant to subsection (1).*

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(b) (i) The distribution must be made by certified mail by the county treasurer to the purchaser at the address listed on the tax sale certificate as provided in 15-17-212(1)(e).

(ii) If the money distributed to the purchaser is returned unopened to the county treasurer, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that:

(A) the county treasurer is in possession of money belonging to the purchaser for the redemption of the delinquency on the property named in the tax sale certificate;

(B) the money will be held by the county treasurer for a period of 1 year from the date of publication; and

(C) if the money is not claimed by the purchaser within the 1-year period, the purchaser relinquishes all claim to the money and the money will be credited to the county general fund.

(3) The publication required in subsection (2)(b)(ii) must be made at least annually, but the 1-year period described in subsection (2)(b)(ii)(B) may not begin until the date of publication.

(4) The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed."

Section 4. Section 15-18-112, MCA, is amended to read:

**"15-18-112. Redemption from property tax lien.** *(1) Except as provided in subsection (3), in* all cases where a property tax lien has been acquired, the purchaser may pay the subsequent taxes assessed against the property.

*(2)* Upon the redemption of the property from the property tax lien, the redemptioner shall, in addition to the amount for which the property tax lien was sold, including penalties, interest, and costs, pay the subsequent taxes *assessed*, with interest *and penalty* thereon at the rate established for delinquent taxes in 15-16-102.

*(3) The property tax lien may also be redeemed for a particular tax year by a partial payment of that tax year as provided in 15-16-102(5) if:*

*(a) the property tax lien for the year in which the partial payment is made is owned by the county; and*

*(b) the tax deed has not been issued pursuant to 15-18-211.*"

Section 5. Section 15-18-214, MCA, is amended to read:

**"15-18-214. Effect of deed.** (1) A deed issued under this chapter conveys to the grantee absolute title to the property described therein as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:

(a) when the claim is payable after the execution of the deed and:

(i) a property tax lien attaches subsequent to the tax sale; or

(ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property;

(b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden lawfully imposed on the property; or

(c) when the land is owned by the United States, this state, or a subdivision of this state.

(2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right of possession accrued as of the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued."

Section 6. Section 7-8-2301, MCA, is amended to read:

**"7-8-2301. Auction sale of county tax-deed land.** (1) Whenever the county *acquires* land by tax deed, it *is* the duty of the board of county commissioners, within 6 months after acquiring title, to make and enter an order for sale of *the* lands at public auction at the front door of the courthouse.

(2) *A* sale *may not* be made for a price less than the fair market value *of the land*, as determined and fixed by the board prior to making the order of sale. In determining fair market value, the board shall subtract the amount of outstanding assessments that are a lien on the land from the unencumbered value of the land, but the minimum sale price for a parcel of land may not be less than $10.

(3) If no bids are received at a sale of tax-deed land, the board shall order another auction sale of *the* land under this part within 6 months and *may*, if required by the circumstances, redetermine the fair market value of the land under subsection (2).

*(4) If no bid is received at the sale conducted under subsection (3), the board may dispose of the land as provided in 7-8-2218."*

Section 7. Section 7-8-2304, MCA, is amended to read:

**"7-8-2304. Terms for sale of tax-deed land.** (1) *A* sale *must* be made for cash or, in the case of real property, on terms *that* the board of county commissioners *approves.*

(2) (a) If *the* sale is made on terms, at least 20% of the purchase price *must* be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All deferred payments bear interest at the rate of 8% per annum.

(b) If a sale is made on terms, the chairman of the board shall execute a contract containing *the* terms *that are* provided by a contract *approved* by the department of revenue."

Section 8. Section 15-18-212, MCA, is amended to read:

**"15-18-212. Notice — proof of notice — penalty for failure to notify.** (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

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(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, no assignment has been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk must provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than *120* days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), no additional notice need be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b), which failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall proceed to give notice in the manner provided in subsection (1)(a).

(b) Notice given under this subsection (3) must be given not less than 60 days or more than *120* days prior to the date on which the county treasurer will issue the tax deed.

(c) A purchaser or assignee who fails to give notice as required by subsection (1)(b), thereby forcing notification to be given under this subsection (3), must be charged a penalty of $500 plus all actual costs of notification incurred by the county proceeding under this subsection (3).

(4) The notice required under subsections (1) through (3) must be made by certified mail to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than *120* days prior to

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the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, *commence publishing* once a week for 2 successive weeks, in the official newspaper of the county or such other newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1) through (3) and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) *Proof* of notice in whatever manner given must be filed with the county clerk. *If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the*

*county or if the county treasurer is required to give notice pursuant to subsection (3), the proof of notice must be filed before the issuance of the tax deed under this chapter.* Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification."

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved May 22, 1989.

# CHAPTER NO. 705

[SB 226]

AN ACT REQUIRING THE BOARD OF LAND COMMISSIONERS TO VALUE CABIN SITE LICENSES AND LEASES AT 3.5 PERCENT OF THE VALUE DETERMINED BY THE DEPARTMENT OF REVENUE OR $150, WHICHEVER IS GREATER; DIRECTING THE BOARD OF LAND COMMISSIONERS TO FOLLOW THE PROCEDURES IN 77-6-302 THROUGH 77-6-306, MCA, FOR THE DISPOSAL OR VALUATION OF CABIN SITE IMPROVEMENTS; AMENDING SECTION 77-1-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 77-1-208, MCA, is amended to read:

**"77-1-208. Cabin site licenses and leases — method of establishing value.** (1) *The* board shall *set* the *annual fee for* each cabin site *subject to a* license or lease in effect on *January* 1, *1988*, for each licensee or lessee who at any time wishes to continue or assign his license or lease. *The fee* must be *3.5%* of the appraisal of the *cabin site value as determined by the department of revenue or $150, whichever is greater. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The* value may be increased or decreased *as a result of the statewide periodic revaluation of property pursuant to 15-7-111. An appeal of a cabin site value determined by the department of revenue shall be conducted pursuant to Title 15, chapter 2.*

*(2) The board shall set the fee of each* initial cabin site license or lease or *each* current cabin site license or lease of a person who does not choose to retain the license or lease. *The initial fee* must be based upon a system

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of competitive bidding. *The fee* for a person who wishes to retain that license or lease *must be determined* under the method provided for in subsection (1).

*(3) The board shall follow the procedures set forth in 77-6-302 through 77-6-306* for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

*(4)* Nothing in this section may be construed as a delegation of rulemaking authority to the board."

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to licenses or leases on cabin sites entered into or extended on or after January 1, 1988.

Approved May 22, 1989.

# CHAPTER NO. 706

[SB 282]

AN ACT PROVIDING A CREDIT AGAINST MONTANA INCOME TAXES FOR AMOUNTS PAID BY AN EMPLOYER FOR DEPENDENT CARE ASSISTANCE PROVIDED TO OR ON BEHALF OF AN EMPLOYEE; AMENDING SECTION 15-30-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Credit for dependent care assistance.** (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is 15% of the amount paid or incurred by the employer during the taxable year, but the credit may not exceed $1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code.

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(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1) if the amount is paid or incurred pursuant to a salary reduction plan or is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S corporation, as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code apply to the extent applicable.

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(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989.

Section 2. **Credit for dependent care assistance.** There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of [section 1].

Section 3. Section 15-30-201, MCA, is amended to read:

**"15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of *the United States, the state of Montana, or a political subdivision thereof.* The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as *an* employee of *the* person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for *the* service, the term "employer" means the person having control of the payment of wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that *the* term *does* not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for *the* service is $50 or more and *the* service is performed by an individual who is regularly employed by *the* employer to perform *the* service. For purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

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(i) on each of 24 days during *a* quarter *the* individual performs *service not in the course of the employer's trade or business* for *the* employer for some portion of the day; *and*

(ii) *the* individual was regularly employed (as determined under subsection (4)(d)(i)) by *the* employer in the performance of service during the preceding calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by *the* order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of *the* price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for *the* service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when *the* payments are in the form of lodgings or meals and *the* services are received by the employee at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

(k) as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

*(l) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under [section 1 or 2], subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989.* **(Subsection (4)(k) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"**

Section 4. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

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(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 2].

Section 5. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 6. **Applicability.** [This act] applies to taxable years beginning after December 31, 1989.

Approved May 22, 1989.

# CHAPTER NO. 707

[SB 283]

AN ACT TO CONTINUE THE AVAILABILITY OF TAX CREDITS FOR QUALIFIED MONTANA CAPITAL COMPANIES THROUGH JUNE 30, 1991; TO AUTHORIZE COAL SEVERANCE TAX CREDIT FOR A QUALIFIED CAPITAL COMPANY THROUGH DECEMBER 31, 1991; TO CLARIFY THE AVAILABILITY OF THE TAX CREDITS; AMENDING SECTION 90-8-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 90-8-202, MCA, is amended to read:

**"90-8-202. Designation of qualified Montana capital companies — tax credit.** (1) The board shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires.

(2) (a) The total amount of tax credits authorized for a single qualified company may not exceed $1,500,000. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June

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30, 1991, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(3) The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the board, and the board shall certify to each such company its appropriate allocation.

(4) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection (5). Funds invested in a certified company prior to designation as a qualified Montana capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company.

(5) Subject to the provisions of *subsections* (2) *and (8)*, an individual, small business corporation, partnership, or corporate taxpayer who makes a capital investment in a qualified Montana capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit of $150,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, *or 35*. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

(6) The tax credit allowed under subsection (5) is to be credited against the taxpayer's income tax liability *or coal severance tax liability* for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code, as amended.

(7) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987.

*(8) An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (5) may not obtain credits in excess of the $150,000 limit contained in subsection (5) by making investments as more than one entity. A partner or shareholder in a small business corporation may not obtain more than $150,000 in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum $150,000 credit may not obtain additional credits through investments by wholly owned subsidiaries or affiliates."*

Section 2. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 22, 1989.

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# CHAPTER NO. 708

[SB 351]

AN ACT AMENDING THE MONTANA CAPITAL COMPANY ACT; CLARIFYING THE AUTHORITY TO SELL DEBENTURES TO THE IN-STATE INVESTMENT FUND; REMOVING RETAINED EARNINGS FROM A COMPANY'S CAPITAL BASE; AMENDING THE TIME FOR CERTIFICATION; AMENDING PROVISIONS FOR CARRYING BACK AND CARRYING FORWARD OF TAX CREDITS; ALLOWING INVESTMENTS IN CAPITAL COMPANIES BY A TRUST AND A DECEDENT'S ESTATE; AMENDING THE TIME SCHEDULE FOR MAKING QUALIFIED INVESTMENTS; PROVIDING FOR AN EXTENSION TO THE SCHEDULE; CLARIFYING RESTRICTIONS ON THE USE OF CAPITAL COMPANY FUNDS; PROVIDING FOR AUTOMATIC DECERTIFICATION IN CERTAIN CASES AND FOR VOLUNTARY DECERTIFICATION; AND AMENDING SECTIONS 90-8-104, 90-8-201, 90-8-202, 90-8-301, 90-8-302, AND 90-8-321, MCA.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Sale of debentures.** (1) A qualified Montana capital company is authorized to issue and sell debentures to the in-state investment fund established in 17-6-306.

(2) Proceeds received by a qualified Montana capital company from the sale of debentures authorized in subsection (1) must be invested in accordance with the provisions of 90-8-301, except that the time periods for making qualified investments must be calculated from the date the company sells the debentures to the in-state investment fund.

Section 2. Section 90-8-104, MCA, is amended to read:

**"90-8-104. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments provided for in 2-15-1808.

(2) "Capital base" means equity capital raised by a certified Montana capital company for which tax credits were claimed under this chapter.

(3) "Certified Montana capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the board.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means:

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(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in (A) through (E) above;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(I) tourism; and

(ii) the business is a small business as defined in rules adopted by the board; or

(b) a debt or equity financing of a business outside Montana if such investment is likely to produce a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base of the capital company.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 3. Section 90-8-201, MCA, is amended to read:

**"90-8-201. Certification of Montana capital companies.** (1) *From time to time* the board shall certify Montana capital companies. A company seeking to be certified as a Montana capital company must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

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(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that such investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company."

Section 4. Section 90-8-202, MCA, is amended to read:

**"90-8-202. Designation of qualified Montana capital companies — tax credit.** (1) The board shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires.

(2) (a) The total amount of tax credits authorized for a single qualified company may not exceed $1,500,000. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(3) The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the board, and the board shall certify to each such company its appropriate allocation.

(4) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection (5). Funds invested in a certified company prior to designation as a qualified Montana capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company.

(5) Subject to the provisions of subsection (2), an individual, small business corporation, partnership, *trust, decedent's estate,* or corporate taxpayer *that* makes a capital investment in a qualified Montana capital company is

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entitled to a tax credit equal to 50% of the investment, up to a maximum credit of $150,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30 or 31. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

(6) The tax credit allowed under subsection (5) is to be credited against the taxpayer's income tax liability for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward *in the following manner:*

*(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.*

*(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.*

(7) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987."

Section 5. Section 90-8-301, MCA, is amended to read:

**"90-8-301. Qualified investments — penalty — extension permissible.** (1) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the certified company was designated as a qualified capital company by the board and, *in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company,* at least 30% of its capital base *raised through investments for which tax credits were taken within 3 years of the date on which the board approves the amended application*;

(b) at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the certified company was designated as a qualified capital company by the board and, *in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company,* at least 50% of its capital base *raised through investments for which tax credits were taken within 4 years of the date on which the board approves the amended application*; and

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(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the board and, *in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company,* at least 70% of its capital base *raised through investments for which tax credits were taken within 5 years of the date on which the board approves the amended application.*

(2) Following each annual examination, the commissioner of financial institutions shall notify the department of revenue of any companies that are not in compliance with this section.

(3) A qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the taxpayers investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana capital company. The department of revenue may abate the penalty if the capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) and *if* the failure was not due to neglect on the part of the company.

*(4) The department of revenue may grant an extension of time in which to make qualified investments pursuant to subsection (1) upon application by a capital company showing reasonable cause for an extension.*

*(5)* The department of revenue shall deposit any amount received under this subsection to the credit of the state general fund."

Section 6. Section 90-8-302, MCA, is amended to read:

**"90-8-302. Restriction on investment.** *In addition to the requirements of 90-8-301, no* more than 50% of the equity raised by a Montana capital company may be invested in any one business, and no more than 25% of the total funds raised for which tax credits were claimed pursuant to the investment credit provisions of this chapter may be invested in any one business."

Section 7. Section 90-8-321, MCA, is amended to read:

**"90-8-321. Decertification.** (1) If the examination conducted pursuant to 90-8-313 discloses that a Montana capital company is not in compliance with the provisions of this chapter, the department of commerce may exercise any of the powers with regard to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it. In the event of liquidation of the assets, any penalty imposed pursuant to 90-8-301 shall be included in the claims to be paid.

(2) If in the discretion of the department of commerce the action allowed under subsection (1) is not required to protect the company's investors, the department may place the company on notice that it will lose its certification as a Montana capital company within a specified period of time if the company does not come into compliance with the provisions of this chapter. *The department shall automatically decertify a Montana capital company that is assessed a penalty under 90-8-301(3).*

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(3) As long as the department acts in good faith, the department and its employees and agents may not be held civilly or criminally liable or liable upon their official bonds for action taken under this section or for any failure to act under it.

*(4) A Montana capital company may apply to the department for decertification.*"

Section 8. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 9. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 90, chapter 8, part 3, and the provisions of Title 90, chapter 8, apply to [section 1].

Approved May 22, 1989.

# CHAPTER NO. 709

[SB 385]

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO REMEDIAL ACTION UPON THE RELEASE OF A HAZARDOUS SUBSTANCE TO INCLUDE CERTAIN PROVISIONS PARALLEL TO THE FEDERAL COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (FEDERAL SUPERFUND); REDEFINING "HAZARDOUS OR DELETERIOUS SUBSTANCE"; ADDING LIMITED IMMUNITY FOR REMEDIAL ACTION CONTRACTORS; AUGMENTING INVESTIGATIVE AND ENFORCEMENT AUTHORITY; PROVIDING FOR PUBLIC NOTICE AND COMMENT ON ADMINISTRATIVE ORDERS AND CONSENT DECREES; CLARIFYING AND ADDING DEFENSES TO LIABILITY; GRANTING CONDEMNATION AUTHORITY FOR CONTAMINATED SITES; AMENDING SECTIONS 75-10-701, 75-10-704, 75-10-711, 75-10-712, AND 75-10-715, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** This part may be cited as the "Comprehensive Environmental Cleanup and Responsibility Act".

Section 2. **Purpose.** The purposes of this part are to:

(1) protect the public health and welfare of all Montana citizens against the dangers arising from releases of hazardous or deleterious substances;

(2) encourage private parties to clean up sites within the state at which releases of hazardous or deleterious substances have occurred, resulting in adverse impacts on the health and welfare of the citizens of the state and on the state's natural, environmental, and biological systems; and

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(3) provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of sites within the state at which no voluntary action has been taken.

Section 3. Section 75-10-701, MCA, is amended to read:

**"75-10-701. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

*(2) "Director" means the director of the department of health and environmental sciences.*

*(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.*

*(4) (a) "Facility" means:*

*(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or*

*(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.*

*(b) The term does not include any consumer product in consumer use.*

*(5)* "Fund" means the environmental quality protection fund established in 75-10-704.

*(6)* "Hazardous or deleterious substance" means a substance that *because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose* an imminent and substantial threat to public health, *safety, or welfare or the environment* and is*:*

*(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14), as amended;*

*(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;*

*(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or*

*(d) any petroleum product.*

*(7) "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other such resources within the state of Montana owned, managed, held in trust or otherwise*

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*controlled by or appertaining to the state of Montana or a political subdivision of the state.*

*(8) (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.*

*(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local government that acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government has caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown Dam licensed under part 1 of the Federal Power Act (FERC License #2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by such dam, unless such owner or operator is a person who would otherwise be liable for such release or threatened release under 75-10-715(1).*

*(9) "Person" means an individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.*

*(10) "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any other petroleum-related product or waste or fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).*

*(11)* "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous or deleterious substance either directly into the environment *(including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance),* but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers as defined in 80-10-101(2) when applied as part of accepted agricultural practice.

*(12)* "Remedial action" includes all *notification,* investigation, *administration,* monitoring, cleanup, restoration, *mitigation,* abatement, removal, replacement, *enforcement, legal action, health studies, feasibility studies,* and other actions necessary or appropriate to respond to a release *or threatened release.*

*(13) "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially responsible party acting pursuant to an order or request issued by the*

*department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.*

*(14) "Remedial action contractor" means:*

*(a) any person who enters into and is carrying out a remedial action contract; or*

*(b) any person who is retained or hired by a person described in subsection (13)(a) to provide services relating to a remedial action.*

*(15) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasibility studies, or health studies."*

Section 4. Section 75-10-704, MCA, is amended to read:

**"75-10-704. Environmental quality protection fund.** (1) There is created in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may only be used to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) *The department shall:*

(a) *establish and implement* a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) *investigate, negotiate,* and *take* legal action, as appropriate, to identify responsible parties, to obtain the participation and financial contribution of responsible parties for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, *natural resource* damages, and *remedial action costs* recovered pursuant to 75-10-715;

*(b) all administrative penalties assessed pursuant to [section 9] and all civil penalties assessed pursuant to 75-10-711(5);*

*(c)* funds appropriated to the fund by the legislature; and

*(d)* funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101."

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Section 5. **Information gathering and access.** (1) The department may undertake any investigative or other information-gathering action that it considers necessary or appropriate for determining the need for remedial action, choosing or taking a remedial action, or otherwise enforcing the provisions of this part.

(2) Any authorized officer, employee, or representative of the department may require a person who has or may have information relevant to a release or threatened release of a hazardous or deleterious substance to furnish, upon request, any information or documents relating to but not limited to the following matters:

(a) the identification, nature, and quantity of a hazardous or deleterious substance that has been or is being generated, treated, stored, or disposed of at or transported from a facility;

(b) the nature or extent of a release or threatened release of a hazardous or deleterious substance at or from a facility;

(c) information relating to the ability of a person to pay for or to perform a cleanup; and

(d) any other information relevant to the department's determination of the appropriate remedial action to be taken or to the enforcement of this part.

(3) For purposes of assisting the department in acquiring information relevant to the need for, the determination of, or the taking of remedial action or otherwise enforcing the provisions of this part, any authorized officer, employee, or representative of the department is authorized to:

(a) enter or have access at reasonable times to any facility or other place or property where:

(i) a hazardous or deleterious substance may be or has been generated, stored, treated, disposed of, or transported from;

(ii) there has been or may be a release of a hazardous or deleterious substance;

(iii) records or other relevant information regarding a release or threatened release is located;

(iv) entry is necessary to determine the need for any appropriate remedial action; or

(v) entry is necessary to effectuate a remedial action under this part; and

(b) inspect and obtain samples from the facility or other place or property referred to in subsection (3)(a) or from any location where a suspected hazardous or deleterious substance may be located. Any authorized officer, employee, or representative of the department is authorized to inspect and obtain samples of containers or labeling for suspected hazardous or deleterious substances. Each such inspection must be completed with reasonable promptness. If the authorized officer, employee, or representative obtains samples, before leaving the premises he shall give to the owner, operator,

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tenant, or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of such samples must be furnished promptly to the owner, operator, tenant, or other person in charge if such person can be located.

(4) The department may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents relating to the matters in [section 5(2)(a) through (2)(d)]. The method for service of subpoenas and payment of witness fees and mileage is the same as that required in civil actions in the district courts of the state. In case of a refusal to obey a subpoena issued and served upon a person pursuant to this subsection, the district court for a district in which the person is found, resides, or transacts business, upon application of the department and after notice to the person, has jurisdiction to issue an order requiring the person to appear and either give testimony or produce documents, or both, before a hearing officer. A failure to obey the order of the court may be punished by the court as a contempt.

(5) If consent is not granted regarding a request made by an authorized officer, employee, or representative under this section, the director of the department may issue an order directing compliance with the request.

(6) The department may commence a civil action to compel compliance with an order issued pursuant to this section.

(7) In any action commenced pursuant to subsection (6) when the court determines that there may be an imminent and substantial threat to public health, safety, or welfare or the environment, the court shall enjoin any activity that constitutes a failure to comply with the order and shall direct compliance with the order unless, under the circumstances of the case, the order is arbitrary and capricious or otherwise not in accordance with law.

(8) Persons subject to the requirements of this section may make a written claim of confidentiality for information unique to the owner or operator of a facility that would, if disclosed, reveal methods or processes entitled to protection as trade secrets. The claim of confidentiality must be clearly designated on the materials at the time they are obtained by the department. If the department accepts the characterization, it shall maintain that information as confidential. Information describing physical or chemical characteristics of hazardous or deleterious substances that have been or may be released into the environment are not considered confidential. The department has access to and may use any trade secret information in carrying out the activities of this part as may be necessary to protect the public health, safety, or welfare or the environment while maintaining the information as confidential.

Section 6. Section 75-10-711, MCA, is amended to read:

**"75-10-711. Remedial action — orders — penalties — judicial proceedings.** (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release *into the environment that may present an imminent and substantial*

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*endangerment to the public health, welfare, or safety or the environment*; and

(b) the appropriate remedial action will not be done properly and expeditiously by *by any person liable under 75-10-715(1).*

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake *remedial action in the form of* any investigation, monitoring, survey, testing, or other information-gathering *as authorized by [section 5]* that is necessary and appropriate to identify the existence, nature, origin, and extent of the release or the threat of release and the extent and imminence of the danger to the public health, *safety, or* welfare or the environment.

(3) Any person *liable under 75-10-715(1)* must take immediate action to contain, remove, and abate the release. Except as provided in 75-10-712, the department is authorized to draw upon the fund to take action under *subsection* (1) if it has made diligent good faith efforts to determine the identity of the *person* or *persons liable* for the release or threatened release and:

(a) is unable to determine the identity of the *liable person* or *persons* in a manner consistent with the need to take timely remedial action; or

(b) the *person* or *persons* determined by the department to be *liable under 75-10-715(1)* have been informed in writing of the department's determination and have been requested by the department to take appropriate remedial action but are unable or unwilling to take action in a timely manner; *and*

*(c) the* written notice to *each person informs him* that if *he* is subsequently found liable pursuant to 75-10-715*(1)*, he may be required to reimburse the fund for the *state's* remedial action *costs* and may be subject to *penalties pursuant to 75-10-715(3).*

*(4) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release that may pose an imminent and substantial threat to public health, safety, or welfare or the environment has occurred or is about to occur, it may issue to any person liable under 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect public health, safety, or welfare or the environment.*

*(5) A person who violates or fails or refuses to comply with an order issued under [section 5] or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than $10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining the amount of any penalty assessed, the court may take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require. Civil penalties collected under this subsection must be deposited into the environmental quality protection fund established in 75-10-704.*

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*(6) A court has jurisdiction to review an order issued under [section 5] or this section only in the following actions:*

*(a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;*

*(b) an action to enforce an order issued under [section 5] or this section;*

*(c) an action to recover a civil penalty for violation of or failure to comply with an order issued under [section 5] or this section; or*

*(d) an action by a person to whom an order has been issued to determine the validity of the order, only if the person has been in compliance and continues in compliance with the order pending decision of the court.*

*(7) In considering objections raised in a judicial action regarding orders issued under this part, the court shall uphold and enforce an order issued by the department unless the objecting party can demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary and capricious or otherwise not in accordance with law.*

*(8) Instead of issuing a notification or an order under this section, the department may bring an action for legal or equitable relief in the district court of the county where the release or threatened release occurred or in the first judicial district as may be necessary to abate any imminent and substantial endangerment to the public health, safety, or welfare or the environment resulting from the release or threatened release."*

Section 7. Section 75-10-712, MCA, is amended to read:

**"75-10-712. Emergency action.** If the department determines that immediate response to an imminent threat to public health, *safety, or* welfare or the environment is necessary to avoid substantial injury or damage to persons, property, or resources, remedial action may be taken pursuant to 75-10-711(1) without the prior written notice required by 75-10-711(3). *The* department *shall* give subsequent written notice to the *person liable under 75-10-715(1)* within 5 days after the action is taken, describing the circumstances which required the action to be taken without prior notice."

Section 8. **Liability of remedial action contractor.** (1) A person who is a remedial action contractor with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.

(2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(3) This section does not affect the liability of a person under a warranty under federal, state, or common law or the liability to an employee

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of an employer who is a remedial action contractor under any provision of law, including any provision of a law relating to workers' compensation.

(4) A state agency, state employee, or an employee of a political subdivision who provides services relating to remedial action while acting within the scope of its or his authority as a governmental agency or employee has the same exemption from liability as is provided to the remedial action contractor under this section.

(5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1) with respect to remedial action costs or damages caused by an act or omission of a remedial action contractor.

(6) Except as provided in subsections (4) and (5), this section does not affect the liability under this part of a person other than a remedial action contractor.

(7) This section does not affect the plaintiff's burden of establishing liability under this part.

(8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially responsible party under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

Section 9. **Administrative penalties.** (1) In lieu of proceeding under 75-10-711(5), the department may assess penalties of not more than $1,000 per day per violation against a person liable under 75-10-715(1) for a release or threat of release who has failed or refused to comply with an order issued by the department pursuant to 75-10-711(4) or against a person who has failed or refused to comply with an order issued by the department pursuant to [section 5(5)].

(2) In determining the amount of any penalty assessed pursuant to this section, the department shall take into account the nature, circumstances, extent, and gravity of the noncompliance and, with respect to the person liable under 75-10-715(1), his ability to pay; any prior history of such violations; the degree of culpability; the economic benefit or savings, if any, resulting from the noncompliance; and any other matters as justice may require.

(3) An administrative penalty may not be collected pursuant to this section unless the person charged with the noncompliance is given notice and opportunity for a hearing with respect to the noncompliance. The notice and opportunity for a hearing must conform to the requirements of Title 2, chapter 4, part 6.

(4) A person against whom a penalty is assessed under this section may obtain judicial review of the penalty as provided for in Title 2, chapter 4, part 7.

(5) Administrative penalties payable under this section must be deposited in the environmental quality protection fund established in 75-10-704.

Section 10. Section 75-10-715, MCA, is amended to read:

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**"75-10-715. Liability — reimbursement and penalties — proceedings — defenses.** (1) *Notwithstanding any other provision of law and subject* only to the defenses set forth in subsection *(5), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious substance from a facility:*

*(a) a person who owns or operates a facility where a hazardous or deleterious substance was disposed of;*

*(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;*

*(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, by contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and*

*(d) a person who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.*

*(2) A person identified in subsection (1) is liable for the following costs:*

(a) all remedial action *costs incurred* by the *state*; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, *including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a governmental permit or license and the project or facility was being operated within the terms of its permit or license.*

*(3)* If the *person liable under 75-10-715(1)* fails, without sufficient cause, to *comply with a department order issued pursuant to 75-10-711(4) or to* properly provide remedial action upon notification by the department pursuant to 75-10-711(3), the *person* may be liable for *penalties* in an amount not to exceed two times the amount of any costs incurred by the *state* pursuant to this section.

*(4)* The department may initiate civil proceedings in district court to recover *remedial action* costs, *natural resource* damages, or penalties under subsections (1) *through (3). Proceedings to recover costs and penalties must be conducted in accordance with [section 13].* Venue for any action to recover costs, damages, or penalties lies in the county where the release occurred or where the *person liable under 75-10-715(1)* resides or has its principal place of business or in the district court of the first judicial district.

*(5)* No *person* is liable under *subsections* (1) *through (3)* if that *person* can establish by a preponderance of the evidence that:

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(a) the department failed to follow the notice provisions of 75-10-711 when required; or

(b) the release did not emanate from any vessel, vehicle, or facility *to which the person contributed any hazardous or deleterious substance or* over which the *person* had any *ownership,* authority, or control and was not caused by any action or omission of the *person*; or

*(c) the release or threatened release occurred solely as a result of:*

*(i) an act or omission of a third party other than either an employee or agent of the person; or*

*(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that he:*

*(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and*

*(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;*

*(d) the release or threat of release occurred solely as the result of an act of God or an act of war;*

*(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;*

*(f)* in the case of assessment of *penalties under subsection (3),* that factors beyond the control of the *person* prevented the *person* from taking timely remedial action; *or*

*(g) the person accepted only household refuse (garbage, trash, or septic tank sanitary wastes generated by single or multiple residences, hotels, motels, restaurants, or similar facilities) for transport to a solid waste disposal facility, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.*

*(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:*

*(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.*

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*(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.*

*(iii) The person acquired the facility by inheritance or bequest.*

*(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that he has satisfied the requirements of subsections (5)(c)(i) or (5)(c)(ii).*

*(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:*

*(i) any specialized knowledge or experience on the part of the person;*

*(ii) the relationship of the purchase price to the value of the property if uncontaminated;*

*(iii) commonly known or reasonably ascertainable information about the property;*

*(iv) the obviousness of the presence or the likely presence of contamination on the property; and*

*(v) the ability to detect the contamination by appropriate inspection.*

*(d) (i) Nothing in subsections (5)(b) and (5)(c) or in this subsection (6) may diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.*

*(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1) through (3) and no defense under subsection (5)(b) or (5)(c) is available to that person.*

*(e) Nothing in this subsection (6) affects the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility."*

Section 11. **Settlement — bar to contribution liability.** (1) A person who has resolved his liability to the state arising under 75-10-715 or section 107(a)(1) through (a)(4) of CERCLA 42 U.S.C. 9607(a)(1) through (a)(4), in an administrative or judicially approved settlement is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons unless its terms provide a discharge. The terms of the settlement may reduce the potential liability of the other potentially liable persons by the amount of the settlement.

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(2) If the state has obtained less than complete relief from a person who has resolved his liability to the state in an administrative or judicially approved settlement, the state may bring an action against any other person who has not resolved his liability.

(3) A person who has resolved, in whole or in part, his liability to the state for the release or for remedial action costs in an administrative or judicially approved settlement may seek contribution from a person who is not party to a settlement referred to in subsection (1).

(4) Whenever practicable and in the public interest, as determined by the director of the department, the department may, as promptly as possible, reach a final settlement with a person liable under 75-10-715 in an administrative or civil action under 75-10-711 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the department, the conditions in either of the following subsection (4)(a) or (4)(b) are met:

(a) Both of the following are minimal in comparison to other hazardous or deleterious substances at the facility;

(i) The amount of the hazardous or deleterious substances contributed by that person to the facility;

(ii) The toxic or other hazardous effects of the substances contributed by that person to the facility.

(b) The person:

(i) is the owner of the real property on or in which the facility is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance at the facility; and

(iii) did not contribute to the release or threat of release of a hazardous or deleterious substance at the facility through any action or omission. This subsection (4)(b) does not apply if the person purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous or deleterious substance.

Section 12. **Condemnation — creation of state lien.** (1) Whenever the department determines that property upon which a release or threatened release of a hazardous or deleterious substance has occurred may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment, the department may condemn the property for public use to mitigate the threat. The taking of the property must be conducted in accordance with the procedure set forth in Title 70, chapter 30, parts 1 through 3.

(2) All costs, penalties, and natural resource damages for which a person has been judicially determined to be liable to the state pursuant to 75-10-715 constitute a lien in favor of the state upon all property and rights to the property that belong to the person.

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(3) The lien imposed by this section arises at the time notice incorporating a description of the property subject to the remedial action and an identification of the amount of costs, penalties, and natural resource damages is duly filed with the clerk and recorder of the county in which the real property is located. A copy of the notice must be served by certified mail upon the liable person.

(4) The costs, penalties, and natural resource damages constituting the lien may be recovered in an action in the district court for the district in which the property is located or in which the remedial action is occurring or has occurred. This section does not affect the right of the state to bring an action against a person to recover all costs, penalties, and natural resource damages for which that person is liable under this part or any other provision of state or federal law.

(5) The lien must continue until the liability for the costs and damages incurred as a result of the release of a hazardous or deleterious substance is satisfied.

Section 13. **Degree of cleanup required — permit exemption.** (1) A remedial action performed under this part must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) shall require cleanup consistent with applicable state or federal environmental requiremments, criteria, or limitations;

(b) shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions; and

(c) shall select remedial actions that, at a minimum, protect public health, safety, and welfare and the environment and that:

(i) use permanent solutions;

(ii) use alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and

(iii) are cost-effective, taking into account the total short- and long-term costs of the actions, including the cost of operation and maintenance activities for the entire period during which the activities will be required.

(3) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under subsection (1) and this part.

Section 14. **Payment of state costs and penalties.** (1) The department shall keep a record of the state's remedial action costs.

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(2) Based on this record, the department shall require a person liable under 75-10-715 to pay the amount of the state's remedial action costs and, if applicable, penalties under 75-10-715(3).

(3) If the state's remedial action costs and penalties are not paid by the liable person to the department within 60 days after receipt of notice that the costs and penalties are due, the department shall bring an action in the name of the state to recover the amount owed plus reasonable legal expenses.

(4) An action to recover remedial action costs may be brought under this section at any time after any remedial action costs have been incurred, and the court may enter a declaratory judgment on liability for remedial action costs that is binding on any subsequent action or actions to recover further remedial action costs. The court may disallow costs or damages only if the person liable under 75-10-715 can show on the record that the costs are not reasonable and are not consistent with this part.

(5) An initial action for recovery of remedial action costs must be commenced within 6 years after initiation of physical on-site construction of the remedial action.

(6) Remedial action costs and any penalties recovered by the state under 75-10-715 must be deposited into the environmental quality protection fund established in 75-10-704.

Section 15. **Public notice of administrative order or consent decree.** (1) Except as provided in 75-10-712, before final approval by the director of the department of any administrative order on consent issued pursuant to 75-10-711 or before judicial approval of a consent decree issued pursuant to this part, the department shall:

(a) publish a notice and brief description of the proposed order or decree in a daily newspaper of general circulation in the area affected and make copies of the proposal available to the public;

(b) provide at least 30 days (or whatever additional time the department may in its discretion grant upon written request) for submission of written comments regarding the proposed order or decree and, upon written request by 10 or more persons or by a group having 10 or more members (but not including a liable person), conduct a public meeting at or near the facility for the purpose of receiving verbal comment regarding the proposed order or decree; and

(c) consider written or verbal comments properly submitted during the comment period or at the public meeting.

(2) Upon making a final decision regarding the proposed order or decree, the department shall publish notice, as provided under subsection (1), and make copies of the approved order or decree available to the public.

Section 16. **Agreements to perform remedial action.** (1) To expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever practicable and in the public interest, may negotiate and enter into an agreement with any person, including the owner

or operator of the facility from which a release emanates, to perform a remedial action if the department determines that the action will be properly done by the person. The agreement must contain terms and conditions that the department in its discretion determines to be appropriate.

(2) Whenever the department enters into an agreement under this section for remedial action or for assessment or payment of natural resource damages, the agreement must be filed in an appropriate district court as a consent decree and must be available for public comment for at least 30 days.

(3) A decision of the department to enter into or not enter into agreements under this section is not subject to judicial review.

Section 17. **Liability apportionment and contribution.** (1) Any person held jointly and severally liable under 75-10-715 has the right at trial to have the trier of fact apportion liability among the parties as provided in this section. The burden is on each liable person to show how his liability should be apportioned. In apportioning the liability of any person under this section, the trier of fact shall consider the following:

(a) the extent to which the person's contribution to the release of a hazardous or deleterious substance can be distinguished;

(b) the amount of hazardous or deleterious substance involved;

(c) the degree of toxicity of the hazardous or deleterious substance involved;

(d) the degree of involvement of and care exercised by the person in manufacturing, treating, transporting, or disposing of the hazardous or deleterious substance;

(e) the degree of cooperation by the person with federal, state, or local officials to prevent any harm to the public health, safety, or welfare or the environment; and

(f) knowledge by the person of the hazardous nature of the substance.

(2) If a person is held jointly and severally liable under 75-10-715 and establishes a proportionate share of the aggregate liability, the person has the right of contribution from any other liable person. If for any reason all or part of the contribution from a person liable for contribution cannot be obtained, each of the other persons against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing person's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing person.

Section 18. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 19. **Codification instruction.** [Sections 1, 2, 5, 8, 9, and 11 through 17] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 1, 2, 5, 8, 9, and 11 through 17].

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Section 20. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 21. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. **Effective date.** [This act] is effective on passage and approval.

Approved May 22, 1989.

# CHAPTER NO. 710

[SB 427]

AN ACT TO REVISE THE SUNRISE PROVISIONS RELATING TO LICENSING OF PROFESSIONS AND PROPOSED NEW BOARDS; AND AMENDING SECTIONS 2-8-203 THROUGH 2-8-208, MCA.

STATEMENT OF INTENT

Although this bill grants no authority to adopt rules, the legislature intends that the legislative audit committee, upon receiving a report from an applicant, only be required to hold a public hearing and make a determination of the need for a new board or the potential for public harm if the applicant remains unlicensed. The legislature also intends that the office of the legislative auditor may not perform an audit of the application.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-8-203, MCA, is amended to read:

"**2-8-203. Committee review and report.** (1) *Except as provided in subsection (5), the* committee shall review and assess the merits of any proposal to:

(a) establish a new licensing board; *or*

*(b)* add to the duties of an existing licensing board responsibility for licensing another occupation or profession.

(2) Any proposal subject to review under subsection (1) must be submitted, in the form of a legislative *report*, to the committee at least 180 days before the first day of the next regular legislative session.

(3) The committee shall conduct the review required by subsection (1) only if the *report* includes:

*(a)* the information required by 2-8-204; and

*(b)* a completed application as provided in 2-8-205.

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(4) *The* committee shall prepare a report to the legislature for its next regular session. The report must include but is not limited to:

*(a) the committee's* estimate of the cost to the state of licensing the occupation or profession and a proposed schedule of fees that will recover the cost of the licensing program as required by 37-1-134; and

*(b)* the committee's recommendation as to whether the profession or occupation should be licensed by the state.

(5) *The provisions of this part do not apply to an agency, profession, or occupation that is required to be licensed or regulated by federal law.*"

Section 2. Section 2-8-204, MCA, is amended to read:

"**2-8-204. Criteria for committee assessment.** (1) The applicant shall demonstrate to the committee and if necessary furnish additional information requested by the committee to show that:

(a) the unregulated practice of the occupation or profession creates a direct, immediate hazard to the public health, safety, or welfare;

(b) the scope of practice is readily identified and easily distinguished from the scope of practice of other professions and occupations;

(c) the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;

(d) practice of the occupation or profession requires specialized skill or training, and nationally recognized standards of education and training exist;

(e) the proposed qualifications for obtaining a license are justified;

(f) the public will benefit from the proposed regulation of the occupation or profession;

(g) public support for the proposed licensure exists;

(h) licensing will not significantly increase the cost of services to the public; and

(i) no other board licenses a similar or closely related occupation or profession.

(2) *The applicant* shall determine *or estimate*:

(a) the number of existing practitioners and the approximate number of people who would be licensed in the future;

(b) the number of people who are likely to use the services of the occupation or profession;

(c) the manner and degree of improved quality of service;

(d) the degree to which licensing will facilitate clients' access to reimbursement for government assistance programs;

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(e) whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence;

(f) whether the public can effectively be protected by other means; and

(g) whether licensing will:

(i) significantly increase the cost of goods and services provided by the occupation or profession;

(ii) adversely affect the scope of practice of other professions and occupations, whether regulated or not; or

(iii) exclude existing practitioners or otherwise reduce the number of practitioners in Montana.

(3) The committee shall consider in its assessment each of the factors in subsections (1) and (2)."

Section 3. Section 2-8-205, MCA, is amended to read:

**"2-8-205. Procedure.** (1) The committee shall adopt an appropriate form for use by applicants, containing a copy of this part and requiring applicants to list:

(a) proposed qualifications of licensed practitioners;

(b) disciplinary procedures that would be applied to practitioners;

(c) proposed requirements for continuing education, if any; and

(d) the information required by 2-8-204.

(2) After the committee has initiated its review under 2-8-203, it may request any additional information it considers necessary to complete its assessment of the proposal.

(3) The committee *shall* hold *at least* one public *hearing during which the applicant and members of the public have an opportunity to testify.*

*(4)* At least one copy of the report must be kept on file with the legislative auditor and made available for public inspection."

Section 4. Section 2-8-207, MCA, is amended to read:

**"2-8-207. Consolidation of existing boards.** Any person or organization may propose consolidation of two or more existing boards. The provisions of 2-8-202 through *2-8-205* apply to such a proposal, except that:

(1) the committee shall designate a representative of each of the occupations or professions regulated by the licensing boards proposed for consolidation, and each representative must be treated as an applicant for purposes of 2-8-202 through *2-8-205*; and

(2) the committee shall weigh the merits of the proposed consolidation against the merits of retaining a separate licensing board for each affected occupation or profession and in its report recommend to the legislature:

(a) the proposed consolidation;

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(b) continuation of the existing licensing boards; or

(c) a modification of the proposed consolidation."

Section 5. Section 2-8-208, MCA, is amended to read:

**"2-8-208. Boards or licensing functions instituted by initiative.** (1) If an initiative to establish a new licensing board or to add a new licensing responsibility to the duties of an existing licensing board is approved by the electorate, the committee shall:

(a) review the initiative to assess the degree to which it meets the criteria in 2-8-204(1);

(b) request *that the petitioners provide* sufficient information from practitioners or other persons *to allow the committee* to make *an assessment as* required by 2-8-204*(3)*; and

(c) evaluate the *petitioners'* initiative in terms of:

(i) clarity and conciseness;

(ii) conformity to existing statutes and principles of administrative law; and

(iii) specificity of the delegation of authority to promulgate rules and set fees.

(2) The committee shall prepare a report to the next session of the legislature. The report must include:

(a) the committee's findings with respect to each of the criteria in 2-8-204;

(b) an estimate of the cost to the state of licensing the occupation or profession and a proposed schedule of fees that will cover the cost of the licensing program as required by 37-1-134;

(c) the committee's recommendation as to whether the initiative should be amended; and

(d) if amendments are recommended, a legislative proposal.

(3) Committee recommendations for amendments to the initiative must be incorporated in a bill introduced during the next session of the legislature."

Section 6. Section 2-8-206, MCA, is amended to read:

**"2-8-206. Application fee.** An application for review under 2-8-203 must include an application fee *of $1,000.* The fee must be used by the committee to pay the cost of the review, and any unused portion must be refunded to the applicant."

Approved May 22, 1989.

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# CHAPTER NO. 711

[HB 452]

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE MONTANA MEDICAID PROGRAM; AMENDING SECTIONS 53-6-101, 53-6-103, 53-6-104, 53-6-113, 53-6-401, AND 53-6-402, MCA; REPEALING SECTIONS 53-6-102 AND 53-6-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

## STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 and 5] grant authority to the department of social and rehabilitation services and to the department of health and environmental sciences to adopt rules to administer and supervise services provided under the Montana medicaid program.

The bill expands the existing rulemaking authority of the department of social and rehabilitation services under [section 5] and provides new authority for the department to adopt rules under [section 4] governing the application of sanctions or action against health care facilities that fail to meet the requirements for certification as a medicaid service provider. Under [section 5], the department is authorized to establish rules necessary for reimbursement or payment of medicaid service providers. It is intended that these rules address the types of medical services that are eligible for medicaid reimbursement; the nature, amount, scope, and duration of services; the rates for reimbursement of services, and the department's interaction with medicaid service providers.

Rules adopted under [sections 4 and 5] should be in accordance with federal regulations applicable to the medicaid program under Title XIX of the federal Social Security Act. In establishing rules on the scope of services and the rates for reimbursement of services, the department of social and rehabilitation services should consider the amount of funds appropriated by the legislature for the Montana medicaid program. The department should also consider the need to provide for services in an efficient and cost-effective manner.

In adopting rules governing the provision of medicaid services, the department of social and rehabilitation services shall take particular care to provide only those services that are medically necessary and to ensure that such services are provided in the least costly setting and by the most efficient and cost-effective means. For example, hospital treatment should not be provided if adequate but less costly nursing home or physician's office services are available.

Under [section 4], the department of social and rehabilitation services and the department of health and environmental sciences are given authority to establish standards for the health, safety, and care provided in a health care facility. This authority is intended to be in addition to existing authority of the department of health and environmental sciences under Title 50 of the Montana Code Annotated.

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Pursuant to [section 4], the department of social and rehabilitation services shall adopt rules establishing appropriate sanctions or action that may be taken against a health care facility that does not meet the minimum standards for certification as a medicaid provider. Such sanctions or action may include civil monetary penalties with interest, the suspension and termination of medicaid certification, and the appointment of management personnel to oversee the operation of a health care facility on a temporary basis in the case of an emergency or when necessary for the orderly closure of a facility or to bring a facility into compliance with minimum standards. This authority is in addition to the authority provided to the department under section 53-6-111, MCA.

The bill also provides the department of social and rehabilitation services authority to adopt rules establishing eligibility for medicaid payment of premiums on behalf of individuals eligible for medicare under Title XVIII of the federal Social Security Act. It is intended that these rules establish the conditions for payments by the department to the federal government for supplemental insurance coverage provided under medicare.

Finally, the bill grants the department of social and rehabilitation services authority to adopt rules for the implementation of local demonstration programs, which would not be available to all residents of the state. The purpose of these demonstration programs is to provide for the delivery of different medical services to different classes of medically indigent persons on a trial basis in order to assess the efficiency or cost-effectiveness of providing alternative services.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 53-6-101, MCA, is amended to read:

**"53-6-101. Montana medicaid program — authorization of services.** *(1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.*

*(2) Medical* assistance *provided by the Montana medicaid program includes the following services*:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services;

(d) skilled nursing services *in long-term care facilities*;

(e) physicians' services;

(f) nurse *specialist services*;

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*(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age.*

*(3) Medical assistance provided by the Montana medicaid program* may, *as provided by department rule,* also include the following *services*:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) *mental health center* services *administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2*;

(g) *clinical* social *worker services*;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) *prescribed* eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

*(k) inpatient psychiatric hospital services for persons under 21 years of age;*

*(l) services of professional counselors licensed under Title 37, chapter 23, if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program;*

*(m)* any additional medical service or aid allowable under or provided by the federal Social Security Act.

*(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.*

*(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.*

*(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.*

*(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.*

*(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.*

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*(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.*

*(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder."*

Section 2. Section 53-6-103, MCA, is amended to read:

**"53-6-103. State plan and operation of medical assistance to be in effect and uniform throughout state.** *The Montana medicaid program, except for those services provided under part 4 of this chapter,* shall be in effect in each and every county of the state, and the administration and supervision of *the program* shall be uniform throughout the counties of the state. *However, the department of social and rehabilitation services may implement temporary or demonstration programs as permitted by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended."*

Section 3. Section 53-6-104, MCA, is amended to read:

**"53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor.** (1) The department of social and rehabilitation services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

(2) Nothing in this section may be construed to prohibit the department from imposing conditions on the payment of provider services and the receipt of medical assistance, as provided for under 53-6-111 *and* 53-6-113 through 53-6-115."

Section 4. **Health care facilities, standards, sanctions, and penalties — definitions.** (1) For purposes of this section, the following definitions apply:

(a) "Department" means the department of social and rehabilitation services.

(b) "Health care facility" means a health care facility as defined in 50-5-101.

(2) The department and the department of health and environmental sciences may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department of health and environmental sciences shall adopt rules prescribing minimum standards for the maintenance and operation of health care facilities, including standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program. These standards must include, as a minimum, those requirements imposed upon health care facilities by Title XIX of the federal Social

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Security Act (42 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in 42 CFR 430, et seq., as may be amended. The authority to prescribe standards and adopt rules under this section is in addition to the authority granted to the department of health and environmental sciences pursuant to Title 50, chapter 5.

(4) Standards adopted by the department of health and environmental sciences may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care planning, training, medication, health services, rehabilitation services, and social services and activities.

(5) The department may suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification adopted for the Montana medicaid program under this section. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other penalties as described in 53-6-111.

(6) The department may impose a civil monetary penalty, with interest not to exceed 12% per annum, for each day that a facility is substantially out of compliance with standards adopted by the department of health and environmental sciences under the authority of Title 50, chapter 5, or this section. Penalties must be collected by the department and may be applied to the protection of the health and property of residents of health care facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(7) The department may appoint temporary management personnel to oversee the operation of the facility and to assure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(8) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both.

(9) The department shall adopt rules governing the application of sanctions or remedies imposed under subsections (5) through (8), the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the standards adopted by the department of health and environmental sciences or those federal standards established in subsection (2) may not exceed $1,000 for each day the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6.

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Section 5. Section 53-6-113, MCA, is amended to read:

**"53-6-113. Department to adopt rules.** *(1)* The department of social and rehabilitation services shall adopt appropriate rules *necessary for the administration of the Montana medicaid program as provided for in this part and as may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as amended.*

*(2) The department shall adopt rules as are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services utilized are medically necessary and that these services are the most efficient and cost effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.*

*(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set such rates of reimbursement as it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to:*

*(a) the availability of appropriated funds;*

*(b) the actual cost of services;*

*(c) the quality of services;*

*(d) the professional knowledge and skills necessary for the delivery of services; and*

*(e) the availability of services.*

*(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.*

*(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part."*

Section 6. Section 53-6-401, MCA, is amended to read:

**"53-6-401. Definitions.** As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of social and rehabilitation services as provided for in Title 2, chapter 15, part 22.

(3) "Long-term care facilities" means facilities that are certified by the department of health and environmental sciences to provide skilled or

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intermediate nursing care services, including intermediate nursing care services for the developmentally disabled.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5) "Long-term care *preadmission screening and resident review*" means an evaluation that results in a determination as to whether a person requires the *services* provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities."

Section 7. Section 53-6-402, MCA, is amended to read:

**"53-6-402. Community-based long-term care facilities — powers and duties of department.** (1) The department may operate, for persons eligible for medicaid, a program of community-based services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, *as may be amended.*

(2) The department may conduct long-term care *preadmission screenings and resident reviews.* Long-term care *preadmission screenings and resident reviews* are required for all medicaid-eligible persons entering long-term care facilities and community-based services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are authorized under medicaid. *Preadmission screenings and resident review* of persons not applying for medical assistance under this part must be on a voluntary basis, *except as required under the Social Security Act.*

(3) The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in subsection (1).

(4) The department may adopt rules necessary to implement a program of community-based medicaid services and to establish a system of long-term care *preadmission screenings and resident reviews* as part of that program."

Section 8. **Repealer.** Sections 53-6-102 and 53-6-141, MCA, are repealed.

Section 9. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 10. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1, apply to [section 4].

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved May 22, 1989.

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# CHAPTER NO. 712

[SB 472]

AN ACT AUTHORIZING MUNICIPALITIES TO CREATE TAX INCREMENT FINANCING INDUSTRIAL DISTRICTS TO ASSIST IN FINANCING NECESSARY INDUSTRIAL INFRASTRUCTURE TO ENCOURAGE THE ATTRACTION, GROWTH, AND RETENTION OF SECONDARY, VALUE-ADDING INDUSTRIES; AND AMENDING SECTIONS 7-15-4282 THROUGH 7-15-4286, 7-15-4288, 7-15-4290, 7-15-4292, 7-15-4293, 7-15-4301, 7-15-4302, AND 7-15-4304, MCA.

WHEREAS, the State of Montana wishes to encourage the attraction and retention of secondary, value-adding industrial manufacturing that uses Montana timber, mineral, oil and gas, coal, and agricultural resources in the production of products in the state; and

WHEREAS, secondary, value-adding industries are those industries that transform raw resources into processed substances from which industrial or consumer products may be manufactured; and

WHEREAS, secondary, value-adding industries, in order to be competitive in today's world economy, require expensive infrastructure that is beyond the means of most Montana communities; and

WHEREAS, Montana law currently provides certain property tax benefits to new and expanding industries, including secondary, value-adding industries, but has little to directly encourage the development of needed industrial infrastructure to attract secondary, value-adding industries; and

WHEREAS, additional creative use of Montana's current tax laws could encourage increased investment in secondary, value-adding industries in the state through the use of tax increment financing for infrastructure improvements in areas in which the infrastructure would be available for secondary, value-adding industrialization.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Short title.** [Sections 1 through 3] may be cited as the "Tax Increment Financing Industrial Development Act".

Section 2. **Legislative findings.** The legislature finds and declares that:

(1) infrastructure-deficient areas exist in the municipalities of the state and constitute a serious impediment to the development of infrastructure-intensive, secondary, value-adding economic development in Montana;

(2) municipalities lack sufficient capital to rectify the infrastructure shortage in infrastructure-deficient areas, thus impeding the ability of municipalities to achieve economic growth through the development of secondary, value-adding industries;

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(3) the creation of industrial infrastructure is a matter of state policy and state concern because the state and its municipalities will continue to suffer economic dislocation due to the lack of secondary, value-adding industries; and

(4) the state's tax increment financing laws should be used to encourage the creation of areas in which needed industrial infrastructure for secondary, value-adding industries could be developed.

Section 3. **Industrial districts.** (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an industrial district for industrial infrastructure development projects if the proposed industrial district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for light or heavy industrial use in accordance with the area master planning document;

(c) does not include any property included within an existing urban renewal area district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries.

(2) An industrial district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293.

Section 4. Section 7-15-4282, MCA, is amended to read:

**"7-15-4282. Authorization for tax increment financing.** Any urban renewal plan, as defined in 7-15-4206, *or industrial district ordinance, adopted pursuant to [section 3]*, may contain a provision or be amended to contain a provision for the segregation and application of tax increments, as provided in 7-15-4282 through 7-15-4292."

Section 5. Section 7-15-4283, MCA, is amended to read:

**"7-15-4283. Definitions related to tax increment financing.** For purposes of 7-15-4282 through 7-15-4292 *and [sections 1 through 3]*, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

(2) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area *or industrial district* prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(3) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area *or industrial district* subject to taxation.

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*(4) "Industrial district" means a tax increment financing industrial district created pursuant to [section 3].*

*(5) "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any or all of the activities authorized by 7-15-4288.*

*(6) "Municipality", for the purpose of an industrial district created pursuant to [sections 1 through 3] and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter, means any incorporated city or town, county, or city-county consolidated local government.*

*(7)* "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area *or industrial district* or a part thereof is located against the incremental taxable value.

*(8)* "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

*(9)* "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

*(10)* "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, which levies taxes against property within the urban renewal area *or industrial district.*"

Section 6. Section 7-15-4284, MCA, is amended to read:

**"7-15-4284. Filing of tax increment provisions of urban renewal plan or industrial district ordinance.** (1) The clerk of the municipality shall file a certified copy of each urban renewal plan *or industrial district ordinance* or *an* amendment thereto containing a tax increment provision with the state, county, or city officers responsible for assessing and determining the taxable value of taxable property within the urban renewal area *or industrial district ordinance* or any part thereof.

(2) A certified copy of the plan, *industrial district ordinance*, or amendment *must* also be filed with the clerk or other appropriate officer of each of the affected taxing bodies."

Section 7. Section 7-15-4285, MCA, is amended to read:

**"7-15-4285. Determination and report of original, actual, and incremental taxable values.** The officer or officers responsible for assessing and determining the taxable value of the taxable property located within the urban renewal area *or industrial district* shall, immediately upon receipt of the tax increment provision and each year thereafter, calculate and report to the municipality and to any other affected taxing body the base, actual, and incremental taxable values of such property."

Section 8. Section 7-15-4286, MCA, is amended to read:

**"7-15-4286. Procedure to determine and disburse tax increment.** (1) Mill rates of taxing bodies for taxes levied after the effective

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date of the tax increment provision shall be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area *or industrial district* and the base taxable value of all taxable property located within the urban renewal area *or industrial district.* The mill rate so determined shall be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area *or industrial district.*

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area *or industrial district* shall be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through 7-15-4292.

(b) The balance of the taxes collected in each year shall be paid to each of the taxing bodies as otherwise provided by law."

Section 9. Section 7-15-4288, MCA, is amended to read:

**"7-15-4288. Costs which may be paid by tax increment financing.** The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project *or industrial infrastructure development project*:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, *sewer lines, sewage treatment facilities,* waterlines, waterways, *water treatment facilities,* public buildings, and other public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

*(6) acquisition of infrastructure-deficient areas or portions thereof;*

*(7) administrative costs associated with the management of the industrial district;*

*(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;*

*(9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district;*

*(10) the connection of the industrial district to existing infrastructure outside the industrial district; and*

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*(11) the provision of direct assistance to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the industrial district.*"

Section 10. Section 7-15-4290, MCA, is amended to read:

"**7-15-4290. Use of property taxes and other revenues for payment of bonds.** (1) The tax increment *derived from an urban renewal area* may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in *7-15-4288 and* 7-15-4289. *The tax increment derived from an industrial district may be pledged for the payment of revenue bonds issued for industrial infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay industrial district costs described in 7-15-4288 and 7-15-4289.* Any municipality issuing such bonds may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other revenues of the municipality, except property taxes prohibited by subsection (2), to the payment of such bonds if collections of the tax increment are insufficient.

(2) No property taxes, except the tax increment derived from property within the urban renewal area *or industrial district* and tax collections used to pay for services provided to the municipality by an urban renewal project *or an industrial infrastructure development project*, may be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged."

Section 11. Section 7-15-4292, MCA, is amended to read:

"**7-15-4292. Termination of tax increment financing.** (1) The tax increment provision shall terminate upon the later of:

(a) the 10th year following its adoption or, if the tax increment provision was adopted prior to January 1, 1980, upon the 12th year following adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest thereon.

(2) Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision shall be distributed among the various taxing bodies in proportion to their property tax revenues from the district.

(3) After termination of the tax increment provision, all taxes shall be levied upon the actual taxable value of the taxable property in the urban renewal area *or the industrial district* and shall be paid into the funds of the respective taxing bodies.

(4) No bonds with tax increment provisions for the repayment thereof may be issued subsequent to the 10th anniversary of tax increment provisions adopted after January 1, 1980, and the 12th anniversary of tax increment provisions adopted prior to January 1, 1980."

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Section 12. Section 7-15-4293, MCA, is amended to read:

**"7-15-4293. Adjustment of base taxable value following change of law.** If the base taxable value of an urban renewal area *or an industrial district* is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue or its agents to calculate the base taxable value as it would have been on the date of the original determination had the change been in effect on that date. The governing body may adjust the base taxable value to that value reported by the department of revenue, under the provisions of 7-15-4287."

Section 13. Section 7-15-4301, MCA, is amended to read:

**"7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development bonds, and refunding bonds.** (1) A municipality shall have the power to:

(a) issue bonds from time to time in its discretion, to finance the undertaking of any urban renewal project *or industrial infrastructure development project* under this part and part 42, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects *and industrial infrastructure development projects*; and

(b) issue refunding bonds for the payment or retirement of such bonds previously issued by it.

(2) Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects *or industrial infrastructure development projects* under this part and part 42, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292, and, if such income, proceeds, revenues, and funds of the municipality are insufficient for such payment, from other revenues of the municipality pledged to such payment. Payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects *or industrial infrastructure development projects* of the municipality under this part and part 42 or by a mortgage on all or part of any such projects.

(3) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body."

Section 14. Section 7-15-4302, MCA, is amended to read:

**"7-15-4302. Authorization to issue general obligation bonds.** (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project *or an industrial infrastructure development project* of a municipality, the municipality, in

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addition to any authority to issue bonds pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project *or an industrial infrastructure development project* is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by this part and part 42 which are necessary or proper to complete the project in accordance with the approved plan *or industrial district ordinance* and any modification thereof duly adopted by the local governing body."

Section 15. Section 7-15-4304, MCA, is amended to read:

**"7-15-4304. Presumption of regularity of bond issuance.** In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this part and part 42 or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project *or industrial infrastructure development project* as herein defined shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this part and part 42."

Section 16. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 7, chapter 15, part 42, and the provisions of Title 7, chapter 15, part 42, apply to [sections 1 through 3].

Approved May 23, 1989.

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# CHAPTER NO. 713

[HB 734]

AN ACT TO GENERALLY REVISE THE INSURANCE AGENT LICENSING LAWS; DIRECTING THE CODE COMMISSIONER TO CHANGE ANY REFERENCE TO THE TERM "ENROLLMENT REPRESENTATIVE", "INSURANCE AGENT", OR "AGENT" TO "INSURANCE PRODUCER", TO CHANGE ANY REFERENCE TO THE TERM "SURPLUS LINES AGENT" OR "SURPLUS LINES INSURANCE AGENT" TO "SURPLUS LINES INSURANCE PRODUCER", AND TO CHANGE ANY REFERENCE TO THE TERM "TITLE AGENT" OR "TITLE INSURANCE AGENT" TO "TITLE INSURANCE PRODUCER" WHEREVER IT APPEARS IN THE MONTANA CODE ANNOTATED; PROHIBITING THE GRANT OR EXTENSION OF A CONTROLLED BUSINESS LICENSE; PROVIDING THAT MISAPPROPRIATION OF INSURANCE PREMIUMS OR RETURN PREMIUMS CONSTITUTES THEFT; ALLOWING THE COMMISSIONER TO REVOKE AN INSURANCE PRODUCER LICENSE FOR UP TO 5 YEARS; ALLOWING FOR THE AUTOMATIC SUSPENSION, REVOCATION, OR TERMINATION OF A NONRESIDENT INSURANCE PRODUCER LICENSE UPON SUSPENSION, REVOCATION, OR TERMINATION IN HIS STATE OF RESIDENCE; PROVIDING FOR APPOINTMENT OF INSURANCE PRODUCERS; PROVIDING FOR NOTIFICATION UPON TERMINATION OF AN APPOINTED INSURANCE PRODUCER; AMENDING SECTIONS 33-1-402, 33-1-711, 33-2-303, 33-2-308, 33-2-309, 33-2-316, 33-2-317, 33-2-708, 33-7-101, 33-8-213, 33-17-101 THROUGH 33-17-103, 33-17-201, 33-17-211 THROUGH 33-17-214, 33-17-216, 33-17-217, 33-17-221, 33-17-301, 33-17-401, 33-17-404 THROUGH 33-17-407, 33-17-411, 33-17-502 THROUGH 33-17-507, 33-17-511 THROUGH 33-17-513, 33-17-602 THROUGH 33-17-604, 33-17-611, 33-17-613, 33-17-1001 THROUGH 33-17-1004, 33-17-1101 THROUGH 33-17-1103, 33-17-1111 THROUGH 33-17-1114, 33-18-401, 33-22-1703, 33-25-202, 33-25-214, 33-25-301, 33-25-302, 33-25-401, AND 33-25-403, MCA; REPEALING SECTIONS 33-17-202, 33-17-204, 33-17-205, 33-17-218, 33-17-402, 33-17-403, 33-17-601, AND 33-17-1104, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Name change — short form amendment.** Wherever it appears in 33-1-317, 33-1-403, 33-1-711, 33-2-104, 33-2-120, 33-2-121, 33-2-302, 33-2-310, 33-2-313, 33-2-315, 33-2-321, 33-2-701, 33-2-707, 33-2-709, 33-2-723, 33-2-829, 33-2-1102, 33-2-1118, 33-2-1120, 33-2-1306, 33-2-1310, 33-2-1322, 33-2-1331, 33-2-1333, 33-2-1345 through 33-2-1347, 33-2-1353, 33-2-1362, 33-2-1381, 33-3-206, 33-3-217, 33-4-103, 33-4-312, 33-4-511, 33-5-104, 33-6-402, 33-6-403, 33-7-111, 33-7-519, 33-7-525, 33-7-526, 33-8-118, 33-8-122, 33-8-204, 33-8-205, 33-8-211, 33-8-221, 33-8-225 through 33-8-228, 33-10-106, 33-10-110, 33-10-113, 33-10-207, 33-10-216, 33-11-104, 33-11-108, 33-11-109, 33-11-123, 33-14-102, 33-14-201,

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33-14-301, 33-14-304, 33-14-307, 33-15-302, 33-15-1101, 33-15-1105, 33-16-106, 33-16-1011, 33-17-206, 33-17-231, 33-17-232, 33-17-401, 33-18-205, 33-18-210 through 33-18-213, 33-18-305, 33-18-501, 33-19-102 through 33-19-104, 33-19-201 through 33-19-205, 33-19-301 through 33-19-306, 33-19-401, 33-19-402, 33-19-404, 33-19-407 through 33-19-409, 33-20-142, 33-20-212, 33-20-502, 33-20-1102, 33-22-122, 33-22-204, 33-22-207, 33-22-208, 33-22-804, 33-22-805, 33-22-813, 33-22-1515, 33-23-214 through 33-23-216, 33-25-105, 33-25-106, 33-25-201, 33-25-202, 33-25-213, 33-25-215, 33-25-216, 33-30-103, 33-30-105, 33-30-202, 33-30-204, 33-30-305, 33-30-311 through 33-30-313, 33-31-102, 33-31-211, 33-31-311, 33-31-401 or in law enacted by the 51st legislature, the code commissioner is directed to change the term "enrollment representative", "enrollment representative's", "enrollment representatives", "enrollment representatives'", "insurance agent", "insurance agent's", "insurance agents", "insurance agents'", "agent", "agent's", "agents", or "agents'" to "insurance producer", "insurance producer's", "insurance producers", or "insurance producers'".

Section 2. **Name change — short form amendment.** Wherever it appears in 33-1-711, 33-2-301 through 33-2-303, 33-2-305 through 33-2-313, 33-2-321, 33-2-326, 33-2-502, 33-2-706, 33-2-709, 33-8-225, 33-17-1104, 33-18-212 or in law enacted by the 51st legislature, the code commissioner is directed to change the term "surplus lines agent", "surplus lines agent's", "surplus lines agents", "surplus lines agents'", "surplus lines insurance agent", "surplus lines insurance agent's", "surplus lines insurance agents", or "surplus lines insurance agents'" to "surplus lines insurance producer", "surplus lines insurance producer's", "surplus lines insurance producers", or "surplus lines insurance producers'".

Section 3. **Name change — short form amendment.** Wherever it appears in 33-2-851, 33-25-105, 33-25-106, 33-25-201, 33-25-213, 33-25-216, 33-30-103 or in law enacted by the 51st legislature, the code commissioner is directed to change the term "title agent", "title agent's", "title agents", "title agents'", "title insurance agent", "title insurance agent's", "title insurance agents", or "title insurance agents'" to "title insurance producer", "title insurance producer's", "title insurance producers", or "title insurance producers'".

Section 4. **Controlled business.** (1) The commissioner may not grant or extend a license to a person if the license is being or will be used to write controlled business.

(2) The commissioner shall consider a license to have been, or intended to be, used for the purpose of writing controlled business if, during any 12-month period, the aggregate amount of premiums on controlled business would exceed the aggregate amount of premiums on all other insurance business of the applicant or licensee.

Section 5. **Appointments of insurance producers by insurers.** (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use another term implying a contractual relationship with a particular insurer and may not accept applications for the insurer unless the insurance producer becomes an appointed insurance producer of that insurer pursuant to this section. The

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following are the appointing insurer's requirements for making appointment of a licensed insurance producer:

(a) The insurer shall, no later than 15 days from the date the agency contract is executed or the first insurance application is submitted by a licensed insurance producer, whichever is earlier, file with the insurance department a written notice of appointment on a form prescribed by the insurance department.

(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgement of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgement is received or the agency contract is executed.

(2) Upon receipt of the notice of appointment, the insurance department shall verify within 5 working days that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer within 5 days of the determination.

(3) An appointment is effective on the date of the executed contract and is perpetual until canceled by the insurer.

Section 6. **Notification of appointment termination.** (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. If the reason of the termination is for any of the causes listed in [section 49 or 62], the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 1, part 7.

(2) Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith.

Section 7. Section 33-1-402, MCA, is amended to read:

**"33-1-402. Examination of insurance producers, managers, and promoters.** For the purpose of ascertaining compliance with this code, the commissioner may, as often as he *considers* advisable, examine the accounts, records, documents, and transactions pertaining to or affecting its insurance affairs or proposed insurance affairs of:

(1) *an* insurance *producer*, surplus lines *insurance producer*, general *insurance producer*, or adjuster;

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(2) *a* person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control an insurer;

(3) *a* person holding the shares of voting stock or policyholder proxies of a domestic insurer, for the purpose of controlling the management *of the domestic insurer*, as voting trustee or otherwise;

(4) *a* person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer or insurance holding corporation or corporation to finance a domestic insurer or the production of its business."

Section 8. Section 33-1-711, MCA, is amended to read:

**"33-1-711. Appeals from the commissioner.** (1) An appeal from the commissioner *may* be taken only from an order on hearing or with respect to a matter as to which the commissioner has refused a hearing. Any person who was a party to *the* hearing or whose pecuniary interests are directly and immediately affected by any order or refusal and who is aggrieved *by an order or refusal* may, within 30 days after the order has been mailed or delivered to the persons entitled to receive the same, the commissioner's order denying rehearing or reargument has been so mailed or delivered, or the commissioner's refusal to grant a hearing, appeal from *the* order on hearing or *the* refusal of a hearing. Any request for a stay of the commissioner's order must be made within 60 days, to run concurrently with the 30 days for appeal. The appeal *must* be taken to the district court of Lewis and Clark County by filing written notice of appeal in *the* court and by filing a copy of *the* notice with the commissioner, except that in appeals from the suspension or revocation of the certificate of authority of a domestic insurer or of the license of an *insurance producer* or surplus lines *insurance producer*, the person taking the appeal may at his option, in lieu of the district court of Lewis and Clark County, take the appeal to the district court of the county of Montana in which the insurer has its principal place of business or the licensee resides.

(2) Upon filing of the notice of appeal, the court *has* full jurisdiction and shall determine whether *the* filing *operates* as a stay of the order or action appealed from.

(3) Within 20 days after filing of the copy of the notice of appeal in his office, the commissioner shall make and return to the court in which the appeal is pending a copy of his order appealed from and a full and complete transcript, duly certified by the commissioner, of his record of the hearing upon which the order was issued, together with all exhibits and documentary evidence introduced *at the hearing.* If the appeal is from an action of the commissioner with respect to which a hearing was refused, the commissioner shall, within *the* 20-day period, make and return to the court a full and complete transcript, duly certified by him, of all documents on file in his office directly relating to the matter as to which *the* appeal is taken.

(4) Upon receipt of *the* transcripts and evidence, the court shall hear the matter de novo as soon as reasonably possible thereafter. Upon the hearing of the appeal, the court shall consider the evidence contained in the

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transcript, exhibits, and documents filed by the commissioner, together with additional proper evidence as may be offered by any party to the appeal.

(5) After hearing the appeal, the court may affirm, modify, or reverse the order or action of the commissioner, in whole or in part, or remand the action to the commissioner for further proceedings in accordance with the court's direction.

(6) Costs *must* be awarded as in civil actions.

(7) Appeal may be taken to the supreme court from the judgment of the district court as in other civil cases to which the state is a party. A stay of the effectiveness of any judgment may be made only by order of the supreme court upon the giving of security as that court *considers* proper.

(8) This section *does* not apply to appeals as to matters covered by chapter 16."

Section 9. Section 33-2-303, MCA, is amended to read:

**"33-2-303. Filing and endorsement of contract.** *Each* insurance contract, cover, note, or certificate of insurance procured and delivered as surplus lines insurance under this part *must* be filed with the commissioner and endorsed as "issued in an unauthorized insurer under The Surplus Lines Insurance Law, under *surplus lines insurance producer* license No. ....." and "NOT covered by the property and casualty guaranty fund of this state if the unauthorized insurer becomes insolvent". The surplus lines *producer* shall properly fill in and sign the endorsement."

Section 10. Section 33-2-308, MCA, is amended to read:

**"33-2-308. Evidence of insurance — changes — penalty.** (1) Upon placing surplus lines insurance, the surplus lines *insurance producer* shall promptly issue and deliver to the insured or the producing *insurance producer* evidence of the insurance, consisting either of the policy as issued by the insurer or, if *the* policy is not then available, a cover note or certificate of insurance signed or countersigned by the *insurance producer. The* cover note or certificate must show the subject, coverage, conditions, and term of the insurance, the premium charged and taxes collected from the insured, and the name and address of the insurer. If the direct risk is assumed by more than one insurer, the cover note or certificate must state the name and address and proportion of the entire direct risk assumed by each insurer.

(2) If after the issuance and delivery of any such cover note or certificate there is any change as to the identity of the insurers or the proportion of the direct risk assumed by the insurer as stated in the original cover note or certificate or in any other material respect as to the insurance coverage evidenced by the cover note or certificate, the *insurance producer* shall promptly issue and deliver to the insured a substitute cover note or certificate accurately showing the current status of the coverage and the insurers responsible *under the coverage.*

(3) If a policy issued by the insurer is not available upon placement of the insurance and the *insurance producer* has issued and delivered a cover

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note or certificate as provided *in subsection (2)*, upon request therefor by the insured, the *insurance producer* shall as soon as reasonably possible procure from the insurer its policy evidencing *the* insurance and deliver *the* policy to the insured in replacement of the cover note or certificate *previously* issued.

(4) *A* surplus lines *insurance producer* who knowingly or negligently issues or delivers a false cover note or certificate of insurance or fails promptly to notify the insured of any material change with respect to *the* insurance by delivery to the insured of a substitute cover note or certificate as provided in subsection (2) *is* guilty of a violation of this code and upon conviction *is* subject to the penalties provided by 33-1-104 or to any greater applicable penalty otherwise provided by law.

(5) A surplus lines *insurance producer* may not issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by *an* eligible surplus lines insurer unless he has authority from the insurer to cause the risk to be insured or has received information from the insurer in the regular course of business that *the* insurance has been granted."

Section 11. Section 33-2-309, MCA, is amended to read:

**"33-2-309. Liability of insurer as to losses and unearned premiums.** (1) As to a surplus lines risk *that* has been assumed by an unauthorized insurer pursuant to The Surplus Lines Insurance Law and if the premium *on the surplus lines risk* has been received by the surplus lines *insurance producer* who placed *the* insurance, in all questions thereafter arising under the coverage as between the insurer and the insured, the insurer *is considered* to have received the premium due to it for such coverage. The insurer *is* liable to the insured as to losses covered by *the* insurance and for unearned premiums *that* may become payable to the insured upon cancellation of *the* insurance, whether or not in fact the *insurance producer* is indebted to the insurer with respect to *the* insurance or for any other cause. This provision *does* not affect rights as between the insurer and the surplus lines *insurance producer.*

(2) A payment of premium to a surplus lines *insurance producer* acting for a person other than himself in negotiating, continuing, or reviewing a policy of insurance under this part is considered to be payment to the insurer, notwithstanding any conditions or stipulations that may be inserted in the policy or contract.

(3) Each unauthorized insurer assuming a surplus lines direct risk under The Surplus Lines Insurance Law is considered to have subjected itself to the terms of this section."

Section 12. Section 33-2-316, MCA, is amended to read:

**"33-2-316. Rules.** (1) The commissioner shall make or may approve and adopt reasonable rules, consistent with this part, for any or all of the following purposes:

(a) effectuation of The Surplus Lines Insurance Law;

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(b) establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus lines insurer or insurers; and

(c) establishment, procedures, and operations of any voluntary organization of surplus lines insurance *producers* or others designed to assist *surplus lines insurance producers* to comply with *the* law.

(2) *The* rules *are* subject to the procedures and carry the penalty provided by 33-1-313."

Section 13. Section 33-2-317, MCA, is amended to read:

**"33-2-317. Exemptions.** The provisions of *The Surplus Lines Insurance Law* controlling the placement of insurance with unauthorized insurers *do* not apply to reinsurance or to the following insurances when placed by a licensed insurance *producer* of this state:

(1) wet marine and transportation insurances;

(2) insurance on subjects located, *residing*, or to be performed wholly outside of this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce; and

(4) insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight or cargo of *the* aircraft or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance, or use of *the* aircraft."

Section 14. Section 33-2-708, MCA, is amended to read:

**"33-2-708. Fees and licenses.** (1) *Except as provided in 33-17-212(2), the* commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection *(1)*(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with *the* application and for issuance of an original certificate of authority, if issued:

| | |
|---|---|
| (A) domestic insurers | *$ 600.00* |
| (B) foreign insurers | *600.00* |
| (ii) annual continuation of certificate of authority | *600.00* |
| (iii) reinstatement of certificate of authority | 25.00 |
| (iv) amendment of certificate of authority | 50.00 |

(b) articles of incorporation:

(i) filing original articles of incorporation of *a* domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state ..... 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation ..... 25.00

(c) filing bylaws or amendment *to bylaws* where required ..... 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority ..... 25.00

(e) *insurance producer's* license:

(i) application for original license, including issuance of license, if issued ..... 15.00

*(ii)* appointment of *insurance producer*, each insurer ..... 10.00

*(iii)* temporary license ..... *15.00*

*(iv)* amendment of license (excluding additions *to license*) or reissuance of master license ..... *15.00*

(f) nonresident *insurance producer's* license:

(i) application for original license, including issuance of license, if issued ..... 100.00

*(ii)* appointment of *insurance producer*, each insurer ..... 10.00

*(iii)* annual renewal *of license* ..... 10.00

*(iv)* amendment of license (excluding additions *to license*) or reissuance of master license ..... 10.00

*(g)* examination for license as *insurance producer*, each examination ..... 15.00

*(h)* surplus lines *insurance producer* license:

(i) application for original license and for issuance of license, if issued ..... 50.00

(ii) annual renewal of license ..... 50.00

*(i)* adjuster's license:

(i) application for original license and for issuance of license, if issued ..... 15.00

(ii) annual renewal of license ..... 15.00

*(j)* insurance vending machine license, each machine, each year ..... 10.00

*(k)* commissioner's certificate under seal (except when on certificates of authority or licenses) ..... 10.00

*(l)* copies of documents on file in the commissioner's office, per page ..... .50

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*(m)* policy forms:

(i) filing each policy form ..... 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks ..... 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days ..... 100.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges received pursuant to Title 33, chapter 11, part 1, that are collected by him pursuant to Title 33 and the rules adopted *under Title 33.*

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded.

(4) All fees and examination and miscellaneous charges, except fines or penalties or those amounts received pursuant to 33-2-311, 33-2-705, or 33-2-706, collected by the commissioner pursuant to Title 33 and the rules adopted *under Title 33* must be deposited in the insurance regulatory trust account pursuant to 17-2-121 through 17-2-123."

Section 15. Section 33-7-101, MCA, is amended to read:

**"33-7-101. Scope of chapter — provisions applicable.** (1) Except as provided *in this section,* societies *are* governed by this chapter and *are* exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state but for every other purpose. No law hereafter enacted *applies* to *societies* unless they *are* expressly designated *in the law.*

(2) In addition to the provisions contained in this chapter, other chapters and provisions of this title apply to fraternal benefit societies to the extent applicable and not in conflict with the express provisions of this chapter and the reasonable implications *of this chapter,* as follows: parts 1 *through* 4 and 7 of chapter 1; 33-2-104; 33-2-107; 33-2-112; chapter 2, part 13; 33-3-308; 33-15-502; *chapter 17;* chapter 18; chapter 20; and chapter 22."

Section 16. Section 33-8-213, MCA, is amended to read:

**"33-8-213. (Temporary) Exemption from insurance producer appointment requirements.** (1) For purposes of the plan:

(a) an insurer that has entered into an agreement as provided in 33-8-212 may accept applications for insurance coverage from any *insurance producer* even though that *insurance producer* has not been appointed by the insurer; and

(b) an *insurance producer* may place business, as to any type of insurance for which he is licensed at the time, with any insurer participating in the plan even though the *insurance producer* has not been appointed as an *insurance producer* by that insurer.

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*(2)* An *insurance producer* who countersigns a policy, when a countersignature is required by 33-17-1111, *must* be paid a countersignature commission as provided in 33-17-1113. **(Terminates July 1, 1989—sec. 22, Ch. 11, Sp. L. March 1986.)"**

Section 17. Section 33-17-101, MCA, is amended to read:

**"33-17-101. Scope of chapter.** *(1) The purpose of this chapter is to govern the qualifications and procedures for licensing insurance producers.*

*(2)* This chapter *applies* to all stock, mutual, and reciprocal insurers and to all kinds of insurance and annuities."

Section 18. Section 33-17-102, MCA, is amended to read:

**"33-17-102. Definitions.** As used in this title, the following definitions apply:

(1) *"Adjuster" means* a person who, on behalf of the insurer, for compensation as an independent contractor or as the employee of an independent contractor or for fee or commission investigates and negotiates settlement of claims arising under insurance contracts or otherwise acts on behalf of the insurer. The term does not include a:

(a) licensed attorney who is qualified to practice law in this state;

(b) salaried employee of an insurer or of a managing general agent; or

*(c)* licensed *insurance producer* who adjusts or assists in adjustment of losses arising under policies issued by the insurer.

*(2) "Adjuster license" means a document issued by the commissioner that authorizes a person to act as an adjuster.*

*(3) (a) "Administrator" means a person who collects charges or premiums from residents of this state in connection with life, disability, property, or casualty insurance or annuities or who adjusts or settles claims on such coverage.*

*(b) The term does not mean:*

*(i) an employer on behalf of its employees or on behalf of the employees of one or more subsidiaries of affiliated corporations of the employer;*

*(ii) a union on behalf of its members;*

*(iii) (A) an insurer that is either authorized in this state or acting as an insurer with respect to a policy lawfully issued and delivered by it in and pursuant to the laws of a state in which the insurer is authorized to transact insurance; or*

*(B) a health service corporation as defined in 33-30-101;*

*(iv) a life, disability, property, or casualty insurance producer who is licensed in this state and whose activities are limited exclusively to the sale of insurance;*

*(v) a creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;*

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*(vi) a trust established in conformity with 29 U.S.C. 186 or the trustees, agents, and employees of the trust;*

*(vii) a trust exempt from taxation under section 501(a) of the Internal Revenue Code or the trustees and employees of the trust;*

*(viii) a custodian acting pursuant to a custodian account that meets the requirements of section 401(f) of the Internal Revenue Code or the agents and employees of the custodian;*

*(ix) a bank, credit union, or other financial institution that is subject to supervision or examination by federal or state banking authorities;*

*(x) a company that issues credit cards and that advances for and collects premiums or charges from its credit card holders who have authorized it to do so, if the company does not adjust or settle claims; or*

*(xi) a person who adjusts or settles claims in the normal course of his practice or employment as an attorney and who does not collect charges or premiums in connection with life or disability insurance or annuities.*

*(4) "Administrator license" means a document issued by the commissioner that authorizes a person to act as an administrator.*

*(5) "Consultant" means* a person who for a fee examines, appraises, reviews, or evaluates an insurance policy, annuity, or pension contract, plan, or program or who makes recommendations or gives advice on an insurance policy, annuity, or pension contract, plan, or program.

*(6) "Consultant license" means a document issued by the commissioner that authorizes a person to act as an insurance consultant.*

*(7) "Controlled business" means insurance procured or to be procured by or through a person upon the life, person, property, or risks of himself, his spouse, his employer, or his business.*

*(8) "Individual" means a private or natural person, as distinguished from a partnership, corporation, or association.*

*(9) "Insurance producer", except as provided in 33-17-103:*

*(a) means:*

*(i) a person who solicits, negotiates, effects, procures, delivers, renews, continues, or binds:*

*(A) policies of insurance for risks residing, located, or to be performed in this state; or*

*(B) membership contracts as defined in 33-30-101;*

*(ii) a managing general agent. For purposes of this definition, a "managing general agent" is a person who, on behalf of an insurer, exercises general supervision over the business of the insurer in this state, including the authority to contract with an insurance producer for the insurer and terminate those contracts.*

*(b) does not mean a customer service representative. For purposes of this definition, a "customer service representative" means a salaried*

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*employee of an insurance producer who assists and is responsible to the insurance producer.*

*(10) "License" means a document issued by the commissioner that authorizes a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create actual, apparent, or inherent authority in the holder to represent or commit an insurer to a binding agreement.*

*(11) "Person" means an individual, partnership, corporation, association, or other legal entity.*

*(12) "Public adjuster" means an adjuster employed by and representing the interests of the insured."*

Section 19. Section 33-17-103, MCA, is amended to read:

**"33-17-103. Exceptions and exemptions from definition of insurance producer.** The *definition* of *insurance producer* contained in 33-17-102 *does* not include:

*(1) a person who is a regularly salaried officer or employee of an insurer and who is engaged in the performance of usual and customary executive, administrative, or clerical duties and whose duties do not include the negotiation or solicitation of insurance;*

*(2) a person who is a salaried employee in the office of an insurance producer and who devotes his full time to clerical and administrative services, including the incidental taking of insurance applications and receipt of premiums in the office of his employer, if the employee does not receive any commissions on the applications and his compensation is not varied by the volume of applications or premiums he takes or receives;*

*(3) a person who secures and furnishes information for the purpose of group life insurance, annuities, group or blanket accident and disability insurance or for the purpose of enrolling individuals under such plans, issuing certificates under such plans, or otherwise assisting in administering such plans, if no commission is paid for the service;*

*(4) an employer, his officers, or employees or the trustees of an employee trust plan, to the extent that the employer, officers, employees, or trustees are engaged in the administration of operation of a program of employee benefits for their own employees or the employees of their subsidiaries or affiliates if the program involves the use of insurance issued by an insurer and the employer, officers, employees, or trustees are not compensated in any manner, directly or indirectly, by the insurer issuing the contracts; or*

*(5) a person who is:*

*(a) an employee of an insurer or of an organization employed by an insurer, which insurer or organization is engaged in the inspection, rating, or classification of insurance risks or in the supervision of the training of insurance producers; and*

*(b) not individually engaged in the solicitation or negotiation of insurance policies and contracts."*

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Section 20. Section 33-17-201, MCA, is amended to read:

**"33-17-201. (Temporary) License required of insurance producer — forms.** (1) *Except as provided in 33-17-103 and subsection (5) of this section, a* person *may not* in this state act as or hold himself out to be an *insurance producer for* subjects of insurance located, *residing,* or to be performed in this state unless licensed as *an insurance producer* under this chapter.

*(2)* The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, or termination of *a license.*

*(3)* Unless licensed as a life insurance *producer* as required by this section, *a* person *may not* in this state solicit life insurance or annuities or procure applications *for life insurance or annuities* or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to insurance or annuities for fee, commission, or other compensation, other than as a salaried full-time employee counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of *the* employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of *the* employees.

*(4)* A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

*(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:*

*(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated; or*

*(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of $50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society.* **(Terminates July 1, 1989—sec. 22, Ch. 11, Sp. L. March 1986.)**

**33-17-201. (Effective July 1, 1989) License required of insurance producer — forms.** (1) *A* person *may not* in this state act as or

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hold himself out to be an *insurance producer for* subjects of insurance located, *residing*, or to be performed in this state unless licensed as *an insurance producer* under this chapter.

*(2)* The commissioner may prescribe by rule and make available the forms required in connection with application for, issuance, continuation, or termination of *a license.*

*(3)* Unless licensed as a life insurance *producer* as required by this section, *a* person *may not* in this state solicit life insurance or annuities or procure applications *for life insurance or annuities* or engage or hold himself out as engaging in the business of analyzing or abstracting life insurance policies or annuities or of counseling or advising or giving opinions, other than as a licensed attorney, relative to insurance or annuities for fee, commission, or other compensation, other than as a salaried full-time employee counseling and advising his employer relative to the insurance interests of the employer and of the subsidiaries or business affiliates of the employer or with respect to the insurance interests of employees of *the* employer, subsidiaries, or affiliates under group insurance or similar insurance plans arranged by the employer or employers of *the* employees.

*(4)* A person licensed to sell coverage only for the all-risk federal crop insurance program shall receive a license restricted to that purpose.

*(5) A representative of a fraternal benefit society who solicits and negotiates insurance contracts is an insurance producer and is subject to the same licensing requirements as those for an insurance producer, except that a license is not required of:*

*(a) an officer, employee, or secretary of a fraternal benefit society or of a subordinate lodge or branch of a fraternal benefit society who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of insurance contracts solicited or negotiated; or*

*(b) a representative of a fraternal benefit society who devotes or intends to devote less than 50% of his time to the solicitation and procurement of insurance contracts for the fraternal benefit society. A person who in the preceding calendar year has solicited and procured life insurance with a face amount in excess of $50,000 or, in the case of any other kind or kinds of insurance that the fraternal benefit society may write, on more than 25 individuals and who has received or will receive a commission or other compensation for the insurance is presumed to be devoting or intending to devote, 50% of his time to the solicitation or procurement of insurance contracts for the fraternal benefit society."*

Section 21. Section 33-17-211, MCA, is amended to read:

**"33-17-211. General qualifications — application for license.** *(1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief.*

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*Before approving the application, the commissioner shall verify that the individual:*

*(a) is 18 years of age or older;*

*(b) has not committed an act that is a ground for refusal, suspension, or revocation set forth in 33-17-1001;*

*(c) has paid the license fees stated in 33-2-708;*

*(d) has successfully passed the examinations for each kind of insurance for which the individual has applied;*

*(e) is a resident of this state or of another state that grants similar privileges to residents of this state;*

*(f) is competent, trustworthy, and of good reputation;*

*(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which he applies to be licensed and is reasonably familiar with the provisions of this code which govern his operations as an insurance producer; and*

*(h) if applying for a license as to life or disability insurance:*

*(i) is not a funeral director, undertaker, or mortician operating in this or any other state;*

*(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or*

*(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.*

*(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:*

*(a) the person meets the requirements listed in subsection (1);*

*(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.*

*(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;*

*(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;*

*(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and*

*(ii) if the person is a corporation, the secretary of state has issued a certificate of incorporation under 35-1-203 or 35-2-203.*

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*(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708 for the license of an insurance producer. The commissioner may, after a hearing with notice to the association, revoke the license if he finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.*

*(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it."*

Section 22. Section 33-17-212, MCA, is amended to read:

**"33-17-212. Examination required — exceptions — fees.** *(1) Except as provided in subsection (7), an individual applying for a license shall pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (6) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.*

*(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-2-708. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.*

*(3) Each individual applying for an examination shall remit the fees required by 33-2-708.*

*(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all required fees and forms before being rescheduled for another examination.*

*(5)* If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license *shall take the examination.*

*(6)* Examination of an applicant for *a* license *must* cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. *For* the purposes of this provision, *property* insurance *includes marine* insurance.

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(d) casualty insurance;

*(e)* surety insurance;

*(f)* credit life and disability insurance;

*(g)* title insurance.

*(7)* This section *does* not apply to and *an* examination *is not* required of:

(a) *an* individual lawfully licensed as an *insurance producer* as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and thereafter continuing to be licensed;

(b) *an* applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months *immediately* preceding *the* date of application unless *the commissioner has* suspended, revoked, or refused *to continue the previous license*, except that this subsection *(b) does* not apply to *a* title *insurance producer*, as defined in 33-25-105;

(c) *an* applicant for license as nonresident *insurance producer*;

*(d) an* applicant for *a* license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that he is qualified to sell *the* insurance;

*(e)* transportation ticket agents of common carriers applying for license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on *a* common carrier, as incidental to their duties as transportation ticket agents;

*(f) an association* applying for license under *33-17-211*;

*(g) a* mechanical breakdown insurance *producer.*

*(h) an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and which is not covered under the license held in the other state.*"

Section 23. Section 33-17-213, MCA, is amended to read:

"**33-17-213. Conduct of examinations.** (1) The commissioner shall make any examination required under 33-17-212 available to applicants with reasonable frequency and at places in this state reasonably accessible to the applicants.

*(2)* The commissioner shall assure that the examinations are conducted in a fair and impartial manner and without unfair discrimination as between individuals examined.

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*(3)* The commissioner may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same kind or kinds of insurance.

*(4)* The examination of a title *insurance producer*, as defined in 33-25-105, must include but is not limited to questions pertaining to the search and examination of title to real property, insurance principles relating to title insurance, and the fiduciary duties and procedures of escrows, settlements, and closings of real estate transactions."

Section 24. Section 33-17-214, MCA, is amended to read:

**"33-17-214. Issuance of license — contents — lapse of license — change of address.** (1) The commissioner shall promptly issue *a* license to *a* person *pursuant to 33-17-211 and 33-17-212.*

(2) The license *must* state the name and address of the licensee, *personal identification number*, date of *issuance*, general conditions relative to expiration or termination, kind of insurance covered, and such other information as the commissioner considers *necessary.*

(3) The license of a partnership, corporation, *or association must* also state the name of each individual authorized to exercise the license powers.

*(4) Each license remains in effect, unless suspended or revoked, as long as the fees required by 33-2-708 are paid.*

*(5) An individual who allows his license to lapse may, within 12 months from the due date of the unpaid annual fee, apply for the same license without having to pass a written examination if he pays a penalty in the amount of twice the unpaid annual fee.*

*(6) A person shall inform the commissioner in writing of a change of address within 30 days of the change.*"

Section 25. Section 33-17-216, MCA, is amended to read:

**"33-17-216. Temporary insurance producer license — fee.** (1) The commissioner may issue a temporary license to or with respect to an individual qualified *for the temporary license* only as to age, residence, and trustworthiness and without requiring *the* individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of *the* administrator or executor, of a licensed *insurance producer* upon *the insurance producer's* death;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed *insurance producer* disabled by injury or physical or mental illness;

(c) to an employee of a *partnership*, or officer or employee of a corporation, licensed as *an insurance producer*, upon the death or disability of an individual designated in the license to exercise the powers *of an insurance producer*;

(d) to the designee of a licensed *insurance producer* entering upon active service in the armed forces of the United States of America;

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*(e) in any other circumstance in which the commissioner finds that the public interest will best be served by issuing such a license.*

(2) The temporary license *must* be issued upon application filed with the commissioner in *the* form and containing *the* information as the commissioner may reasonably require and upon payment of the applicable fee as *provided* in 33-2-708.

(3) The temporary license *must* be for a period of not over 90 days, subject to extension by the commissioner in his discretion for an additional period of not more than 90 days, except that a *temporary* license issued pursuant to subsection (1)(a) may be continued without payment of an additional fee until the executor or administrator disposes of the insurance business, but not to exceed a period of 15 months. A temporary license issued to the next of kin under subsection (1)(a) may not be extended for an additional term after the appointment and qualification of *the* administrator or executor.

(4) The fee paid for the temporary license may be applied upon the fee required for a permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance."

Section 26. Section 33-17-217, MCA, is amended to read:

**"33-17-217. Limitations and rights under temporary license.** (1) The commissioner *may* not issue more than one temporary license, to or with respect to the same individual to be licensed, within any 12-month period.

(2) The temporary license may cover the same kinds of insurance for which the *insurance producer* being replaced was licensed.

(3) As to a temporary *insurance producer's* license issued on account of the death or disability of an *insurance producer*, the licensee may represent all of the insurers last represented by *the* deceased or disabled *insurance producer*, but the licensee *may* not be *licensed for an* additional kind of insurance under *the* temporary license.

(4) A temporary licensee *has* the same license powers and duties as under a permanent license."

Section 27. Section 33-17-221, MCA, is amended to read:

**"33-17-221. Licensing insurance vending machines.** (1) A licensed resident *insurance producer* may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending *machines* supervised by him and placed at airports, railroad stations, bus stations, and similar places where transportation tickets are sold and of convenience to the traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through *a mechanical* vending *machine*, and use of a *mechanical vending* machine *to sell or issue a policy* in a particular proposed location would be of material convenience to the public;

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(b) the type of *mechanical* vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in *a* defective *mechanical vending machine* and for which no insurance or a less amount than that paid for is actually received.

(2) As to each *mechanical vending* machine to be used *to sell or issue a policy*, the commissioner shall issue to the *insurance producer* a special *mechanical* vending machine license. The license *must* specify the name and address of the insurer and *insurance producer*, the name of the policy to be sold *or issued through the mechanical vending machine*, the serial number of the *mechanical vending* machine, and the place where the machine *will operate*. The license *is* subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the *insurance producer*. The commissioner shall also revoke the license *of a mechanical vending* machine *if* he finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. The license fee *is* as *provided* in 33-2-708 for each license year or part *of the year* for each respective *mechanical* vending machine. Proof of the existence of a subsisting license *must* be displayed on or about each *mechanical* vending machine in use in *the* manner *that* the commissioner may reasonably require."

Section 28. Section 33-17-301, MCA, is amended to read:

**"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster.** (1) *A* person *may not* in this state act as or hold himself out to be an adjuster unless licensed *as an adjuster* under this chapter. *A person shall apply* for *an adjuster* license to the commissioner according to forms *the commissioner prescribes and furnishes*. The commissioner shall issue the *adjuster* license to individuals qualified *to be licensed as an adjuster* upon payment of the license fee *provided* in 33-2-708.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state *that* will permit residents of Montana regularly to act as adjusters in *the* other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make him competent to fulfill the responsibilities of an adjuster;

(d) must be *trustworthy and* of good character and reputation;

(e) *shall* have and maintain in this state an office accessible to the public and keep *in the office* the usual and customary records pertaining to

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transactions under the license. This provision *does* not prohibit maintenance of *the* office in the home of the licensee.

(3) A *partnership* or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the *adjuster* license powers is separately licensed or is named in the *partnership* or corporation *adjuster* license and is qualified for an individual *adjuster* license. An additional full license fee *must* be paid *for* each individual in excess of one named in the *partnership* or corporation *adjuster* license to exercise its powers.

(4) *An adjuster* license or qualifications *are not* required *for an* adjuster who is sent into this state by and on behalf of an insurer or adjusting *partnership* or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

*(5) An adjuster license continues in force until expired, suspended, revoked, or terminated. The license is subject to annual payment to the commissioner of the renewal fee required by 33-2-708, accompanied by a written request for renewal.*

*(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."*

Section 29. Section 33-17-401, MCA, is amended to read:

**"33-17-401. Nonresident insurance producer — reciprocity.** *(1) A nonresident person may apply for a license if:*

*(a) the person meets the requirements of 33-17-211(2);*

*(b) the person is licensed in the state of his residence to act as insurance producer for the kind or kinds of insurance for which he applies for licensing in this state; and*

*(c) the person's state of residence issues a similar license to a resident of this state for the same kind or kinds of insurance for which the person is qualified in this state.*

*(2) The commissioner may license a nonresident individual without written examination if the insurance department in the individual's state of residence certifies that:*

*(a) the individual either has passed a written examination for each kind of insurance applied for or was licensed prior to the time a written examination was required in the individual's state of residence; and*

*(b) is currently licensed and in good standing.*

*(3)* The commissioner may issue only a nonresident license to a person, partnership, or corporation otherwise qualified under this code but not a resident of this state.

*(4) If, by the laws or rules of another state, a limitation of rights and privileges, conditions precedent, or any other requirements are imposed upon a resident of this state who is a nonresident licensee of the other state*

*and the limitation, conditions, or requirements are in addition to or in excess of those imposed on nonresident persons under this chapter, the same limitation, conditions, or requirements must be imposed upon the residents of the other state.*

*(5) If a nonresident insurance producer's state of residence suspends, revokes, or terminates his insurance license in that state, his Montana nonresident license automatically terminates and the nonresident insurance producer shall notify the commissioner that his state of residence has suspended, revoked, or terminated his insurance license in that state.*"

Section 30. Section 33-17-404, MCA, is amended to read:

"**33-17-404. Countersigning coverage of residents.** Except as provided in 33-17-1111, a nonresident *insurance producer may* not sign or countersign policies covering subjects of insurance *residing,* located, or to be performed in Montana."

Section 31. Section 33-17-405, MCA, is amended to read:

"**33-17-405. Service of process — commissioner as insurance producer.** *A nonresident person shall file with the commissioner the required forms appointing the commissioner and his successors in office as the nonresident person's agent upon whom process in a legal proceeding against the nonresident person may be served and shall agree that such process has the same legal force and validity as personal service of process upon the nonresident person. The commissioner shall, within 3 working days after receiving process, forward, at the nonresident person's address of record, a copy of the process by certified mail to the person for whom he has received the process.*"

Section 32. Section 33-17-406, MCA, is amended to read:

"**33-17-406. Nonresident insurance producer subject to insurance code.** *A* nonresident *insurance producer is* subject to the provisions of the Montana Insurance Code as though a resident of this state, unless otherwise provided."

Section 33. Section 33-17-407, MCA, is amended to read:

"**33-17-407. Nonresident insurance producer to pay taxes — annual report required.** (1) A nonresident *insurance producer* is subject to personal income, business income, or corporate license taxes for all income earned on insurance policies issued to cover subjects or risks *residing,* located, or to be performed in Montana *and written within the boundaries of this state.*

(2) A nonresident *insurance producer* shall *file* annually *a Montana income tax return as required in Title 15.*"

Section 34. Section 33-17-411, MCA, is amended to read:

"**33-17-411. Penalty.** A nonresident *insurance producer* who violates *a* condition of his Montana license or *a* provision of this part is subject to a fine by the commissioner of up to $50,000 for each violation and may, at the discretion of the commissioner, have his Montana nonresident license revoked or suspended for a period of up to 5 years."

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Section 35. Section 33-17-502, MCA, is amended to read:

**"33-17-502. Prohibition on holding out as consultant — receiving fee.** (1) *A* person not licensed as an insurance consultant in this state who identifies or holds himself out to be an insurance consultant without having been licensed as an insurance consultant under this part or *a* person who uses any other designation or title *that* is likely to mislead the public and holds himself out in any manner as having particular insurance qualifications other than those for which he may be otherwise licensed or otherwise qualified is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(2) *A* person not licensed as an insurance consultant with respect to the relevant kinds of insurance who receives *a* fee for examining, appraising, reviewing, or evaluating any insurance policy, annuity or pension contract, plan, or program or who *makes* recommendations or *gives* advice with regard to any of the above without first having been licensed by the commissioner as an insurance consultant is guilty of a misdemeanor and upon conviction shall be fined $1,500.

(3) Nothing in this part applies to:

(a) licensed attorneys at law in this state acting in their professional capacity;

(b) an actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity if neither he nor his employer receives any compensation directly or indirectly on account of any insurance, bond, annuity or pension contract that results in whole or part from that information, recommendation, advice, or services; or

(c) a licensed casualty insurance *producer* who accepts a fee from an insured for placement through the state compensation insurance fund as provided in 33-18-212."

Section 36. Section 33-17-503, MCA, is amended to read:

**"33-17-503. Application — fee — expiration.** (1) Before *a consultant* license is issued or renewed, the prospective licensee shall:

(a) properly file in the office of the commissioner a written application on forms the commissioner prescribes; and

(b) pay a fee of $50.

(2) *Each consultant* license *expires* on May 31 next following the date of issue."

Section 37. Section 33-17-504, MCA, is amended to read:

**"33-17-504. Issuing license — limitations.** The commissioner may issue *a consultant* license to *an individual* who has complied with the requirements of this chapter with respect to either life insurance, meaning all of those kinds of insurance authorized in 33-1-207, 33-1-208, 33-20-1001, 33-21-103, 33-22-501, and 33-22-601, or general insurance, meaning all of

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those kinds of insurance authorized in 33-1-206, 33-1-207, 33-1-209 through 33-1-212, and 33-1-221 through 33-1-229, as specified in *the* license."

Section 38. Section 33-17-505, MCA, is amended to read:

**"33-17-505. Qualification — fee.** (1) In order to determine the competency of *an* applicant for *a consultant* license, the commissioner shall require the applicant to pass an examination.

(2) The fee for taking *the consultant license* examination *is* $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination *may* be no more than the cost of administering *the* examination, not to exceed $50."

Section 39. Section 33-17-506, MCA, is amended to read:

**"33-17-506. Grounds for refusal to issue license.** The commissioner may refuse to issue *a consultant* license if, in his judgment, the applicant is not trustworthy and competent to act as a consultant, has given cause for revocation or suspension of a license, or has failed to comply with any prerequisite for the issuance of a license."

Section 40. Section 33-17-507, MCA, is amended to read:

**"33-17-507. Revocation.** The commissioner may revoke or suspend *a consultant* license for a period he determines if, after notice and hearing as specified in this chapter, he determines that the licensee:

(1) has violated any provision of or any obligation imposed by the insurance law or has violated any law in the course of his dealings as *an insurance* consultant;

(2) has made a material misstatement in application for a *consultant* license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated his incompetency or untrustworthiness to act as an insurance consultant."

Section 41. Section 33-17-511, MCA, is amended to read:

**"33-17-511. Consideration for services only on written memorandum.** *A* person licensed as an insurance consultant under this part may *not* receive *a* fee for examining, appraising, reviewing, or evaluating *an* insurance policy, bond, annuity or pension or profit-sharing contract, plan, or program or for making recommendations or giving advice with regard to any of the above unless the compensation is based upon a written memorandum signed by the party to be charged and specifying or clearly defining the amount or extent of the compensation. *An insurance consultant shall retain a* copy of every memorandum or contract for not less than 3 years after those services have been fully performed."

Section 42. Section 33-17-512, MCA, is amended to read:

**"33-17-512. Limitation on type of consideration.** *A* person licensed as an insurance consultant may *not* receive any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the

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use of securities or trusts in connection with pensions for *a* person to whom *the* licensee has performed *a* related consulting service for which he has received a fee or contracted to receive a fee within the preceding 12 months."

Section 43. Section 33-17-513, MCA, is amended to read:

**"33-17-513. Restrictions on insurers recommended by licensee.** *A* person licensed as an insurance consultant under this part may *not* recommend or encourage the purchase of insurance, annuities, or securities from *an* authorized insurer in which he or any member of his immediate family holds an executive position or holds a substantial interest."

Section 44. Section 33-17-602, MCA, is amended to read:

**"33-17-602. Written agreement required.** (1) *A* person may *not* act as an administrator without a written agreement between the person and the insurer. The written agreement *must* be retained as part of the official records of both the administrator and the insurer for the duration of the agreement and for 5 years thereafter. The written agreement *must* contain provisions *that* include the requirements of 33-17-612 through 33-17-617 insofar as these requirements relate to the functions performed by the administrator.

(2) The agreement *must* contain a provision with respect to the underwriting or other standards pertaining to the business underwritten by *the* insurer.

(3) Whenever a policy is issued to a trustee, a copy of the trust agreement and any amendments *to it must* be furnished to the insurer by the administrator and be retained as part of the official records of both the administrator and the insurer for the duration of the policy and for 5 years thereafter."

Section 45. Section 33-17-603, MCA, is amended to read:

**"33-17-603. Certificate of registration.** (1) Except as provided in 33-17-604, *a* person may *not* act as or hold himself out to be an administrator in this state unless he holds a certificate of registration as an administrator.

(2) An application for a certificate of registration must be accompanied by a fee of $100. The commissioner shall issue the certificate unless he finds that the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation or that the applicant has had a previous application for *a* license denied for cause within 5 years.

(3) The certificate of registration is renewable annually on the date of issue. A request for renewal must be accompanied by a renewal fee of $100.

(4) The certificate of registration may be suspended or revoked if, after notice and hearing, the commissioner finds that the administrator has violated any of the requirements of this part or that the administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

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(5) Unless the certification requirement is waived, *a person* who acts as *an administrator* without *a* certificate of registration is subject to a fine of not less than $500 or more than $1,500."

Section 46. Section 33-17-604, MCA, is amended to read:

**"33-17-604. Waiver of certification requirements.** The commissioner may waive the requirements of 33-17-603 for any person or class of persons. The factors taken into account in granting *a* waiver include but are not limited to:

(1) whether the person acting as an administrator is primarily in a business other than that of administrator;

(2) whether the financial strength and history of the organization indicates stability in its continuity of doing business;

(3) whether the regular duties being performed as an administrator are such that the covered persons are not likely to be injured by a waiver of *the* requirements."

Section 47. Section 33-17-611, MCA, is amended to read:

**"33-17-611. Maintenance of information.** For the duration of the agreement required by 33-17-602 and for 5 years thereafter, each administrator shall maintain at its principal administrative office adequate books and records of all transactions between the administrator, insurers, and insured persons. These books and records *must* be maintained in accordance with prudent standards of insurance recordkeeping. The commissioner shall have access to these books and records for examination, audit, or inspection. Any trade secrets contained in the books and records, including but not limited to the identity and addresses of policyholders and certificate holders, *are* confidential, except that the commissioner may use *the* information in any proceedings instituted against the administrator. The insurer retains the right to continuing access to those books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement between the insurer and the administrator."

Section 48. Section 33-17-613, MCA, is amended to read:

**"33-17-613. Collection of charges and premiums.** (1) All insurance charges or premiums collected by an administrator on behalf of or for an insurer and return premiums received from *the* insurer are held by the administrator in a fiduciary capacity. These funds *must* be immediately remitted to the person entitled *to them* or *must* be deposited promptly in a fiduciary bank account established and maintained by the administrator. If deposited charges or premiums were collected on behalf of or for more than one insurer, the administrator shall require the bank in which the fiduciary account is maintained to keep records clearly recording the deposits in and withdrawals from *the* account on behalf of or for each insurer. The administrator shall promptly obtain and keep copies of all these records and, upon request of an insurer, shall furnish the insurer with copies of the records pertaining to deposits and withdrawals on behalf of or for the insurer.

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(2) The administrator *may* not pay *a* claim by withdrawals from the fiduciary account. Withdrawals from the fiduciary account *must* be made, as provided in the written agreement between the administrator and the insurer, for:

(a) remittance to an insurer entitled *to the remittance*;

(b) deposit in an account maintained in the name of *the* insurer;

(c) transfer to and deposit in a claims paying account, with claims to be paid as provided in 33-17-615;

(d) payment to a group policyholder for remittance to the insurer entitled *to the payment*;

(e) payment to the administrator of its commission, fees, or charges; or

(f) remittance of return premiums to the person entitled *to the premium.*"

Section 49. Section 33-17-1001, MCA, is amended to read:

"**33-17-1001. Suspension, revocation, or refusal of license.** (1) Except as provided in 33-17-411, the commissioner may suspend for not more than 12 months, may revoke or refuse to continue, *or may deny an application for a* license issued under this chapter or any surplus lines *insurance producer* license if, after hearing held on not less than 10 days' advance notice by certified mail of *the* hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee, he finds that the licensee *or applicant has*:

(a) *engaged or is about to engage in an act or practice* for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) *obtained* or *attempted* to obtain *a* license through misrepresentation or fraud;

(c) *violated or failed to comply* with *a* provision of this code or *has violated a* rule, *subpoena,* or order of the commissioner *or of the commissioner of any other state*;

(d) *improperly withheld, misappropriated, or converted* to his own use *money* or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) *been convicted* of a felony;

(f) in the conduct of his affairs under the license, used fraudulent, *coercive,* or dishonest practices or has shown himself to be incompetent, untrustworthy, *financially irresponsible,* or a source of injury and loss to the public;

*(g) made a materially untrue statement in the license application;*

*(h) misrepresented the terms of an actual or proposed insurance contract;*

*(i) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;*

*(j) had his license suspended or revoked in any other state;*

*(k) forged another's name to an application for insurance;*

*(l) cheated on an examination for a license; or*

*(m) knowingly accepted insurance business from a person who is not licensed.*

(2) The license of a partnership or corporation may be suspended, revoked, refused, *or denied if a reason listed in subsection (1) applies to an* individual designated in the license to exercise its powers.

(3) The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204."

Section 50. Section 33-17-1002, MCA, is amended to read:

**"33-17-1002. Procedure following suspension or revocation.** (1) Upon suspension or revocation of *a* license, the commissioner shall *immediately* notify the licensee *of the suspension or revocation* either in person or by mail addressed to the licensee at his address last of record with the commissioner. Notice by mail *is* effectuated when *the notice is* mailed.

*(2)* The commissioner *may* not again issue a license under this code to *a* person whose license has been revoked until after expiration of 1 year and thereafter not until *the* person again qualifies *for a license* in accordance with this code. *If the commissioner revokes a person's license, the commissioner may refuse to issue a license to the person for up to 5 years after the revocation.* A person whose license has been revoked twice *is* not again eligible for any license under this code.

*(3)* If the license of a partnership or corporation is suspended or revoked, no member of *the* partnership or officer or director of *the* corporation *may* be licensed or be designated in *a* license to exercise *its* powers during the period of *the* suspension or revocation unless the commissioner determines upon substantial evidence that *the* member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked."

Section 51. Section 33-17-1003, MCA, is amended to read:

**"33-17-1003. Return of license.** (1) All licenses issued under this chapter, although issued and delivered to the licensee *insurance producer* or adjuster *are* at all times the property of the state of Montana. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall *immediately* deliver it to the commissioner either by personal delivery or by mail.

(2) As to any license lost, stolen, or destroyed while in the possession of *a* licensee or person, the commissioner may accept in lieu of return of the license the affidavit of the licensee or person responsible for or involved

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in the safekeeping of *the* license, concerning the facts of *the* loss, theft, or destruction."

Section 52. Section 33-17-1004, MCA, is amended to read:

**"33-17-1004. Acting as insurance producer or adjuster without license — penalty.** Except as provided in 33-17-411, a person who, in this state, acts as an insurance *producer* or adjuster without having authority to do so by virtue of a license issued and in force pursuant to this chapter is guilty of a misdemeanor and upon conviction shall be fined $500 or imprisoned in the county jail for 90 days, or both."

Section 53. Section 33-17-1101, MCA, is amended to read:

**"33-17-1101. Place of business — display of license — records.** (1) Every resident *insurance producer* shall have and maintain a place of business in this state accessible to the public. A nonresident *insurance producer* may maintain a place of business in this state. An *insurance producer's* place of business must be *a place in which* he principally conducts transactions under his license. The street address of *the* place *must* appear upon the license. Nothing in this section prohibits maintenance of *the* place of business in the licensee's place of residence.

(2) The license must be conspicuously displayed in *the* place of business at the street address shown on the license in a part *of the place of business* customarily open to the public.

(3) The *insurance producer* shall keep at his place of business complete records pertaining to transactions under his license for a period of at least 3 years after completion of the respective transactions, except that *a* title *insurance producer*, as defined in 33-25-105, shall retain records as provided in 33-25-214 and 33-25-216."

Section 54. Section 33-17-1102, MCA, is amended to read:

**"33-17-1102. Reporting and accounting for premiums — misappropriation.** (1) All *insurance* premiums or return premiums received by an *insurance producer* must be held in a separate trust account. The *insurance producer* shall at all times act in a fiduciary capacity and shall, in the applicable regular course of business, account for and pay the *insurance premiums or return premiums he receives* to the insured, insurer, or *insurance producer* entitled *to them*. Except for a title *insurance producer* as defined in 33-25-105, an *insurance producer* may deposit and commingle in the same separate deposit all funds belonging to others so long as the amount of *the* deposit held for each respective person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any *insurance producer* not lawfully entitled *to the funds* may not divert or appropriate *the* funds or any portion *of the funds* to his own use.

*(3) An insurance producer who unlawfully diverts or appropriates insurance premiums or return premiums to his own use is, upon conviction, guilty of theft and is punishable as provided by law."*

Section 55. Section 33-17-1103, MCA, is amended to read:

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33-17-1111 contracted for or otherwise originating outside the boundaries of Montana, a commission *of* not less than 5% of the premium charged and received but not *more than* 50% of the commission paid by the insurer *is payable to the countersigning insurance producer*, so that a record within Montana will be kept of *the* business and *so* that the state may better receive any tax required by law to be paid with respect to *the* insurance. If, however, the originating *insurance producer* or the insurer desires additional service to be rendered during the term of the policy, then the compensation for *the* countersigning resident *insurance producer must* be in *an* additional amount as is fixed by mutual agreement of *the* parties in interest.

(2) If pursuant to the laws of another state the countersigning *insurance producers* of that state retain as commission or compensation with respect to business originated by Montana *insurance producers* more than 5% of the premium, then *the* Montana *insurance producers* who countersign policies representing business originated by *insurance producers* of *the* other state shall charge and receive a commission in *an* amount not less than that received by countersigning *insurance producers* of the other state."

Section 59. Section 33-17-1114, MCA, is amended to read:

**"33-17-1114. Policies issued at home or branch offices.** Nothing in 33-17-1111 through 33-17-1113 *prevents an* insurer from issuing *a* policy, as to which the countersignature requirement of 33-17-1111 *applies*, at its home or branch office, but *the policy must* be subsequently countersigned, where otherwise required, by *an insurance producer residing* in Montana. The *insurance producer residing* in Montana shall receive the commission on *the* policy when the *insurance* premium is paid. This section does not apply to life insurance."

Section 60. Section 33-18-401, MCA, is amended to read:

**"33-18-401. False application, claim, and proof of loss — criminal penalty.** *(1) An insurance producer*, examining physician, applicant, or other person who knowingly or willfully makes *a* false or fraudulent statement or representation in or with reference to *an* application for insurance *is* guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $1,000 or by imprisonment in the county jail for not less than 3 months or more than 6 months or both such fine and imprisonment at the discretion of the court.

*(2) An insurance producer, examining physician, applicant, or other person who, for the purpose of obtaining any money or benefit, knowingly or willfully presents or causes to be presented a false or fraudulent claim or any proof in support of such a claim for the payment of the loss upon a contract of insurance or prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him."*

Section 61. Section 33-25-202, MCA, is amended to read:

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**"33-25-202. Sharing of rate proceeds.** Title insurers and *insurance producers* may share rate proceeds between or among themselves in any combination and may *accept* commissions as provided in 33-17-1103, unless the sharing of rate proceeds is an unlawful rebate or inducement under this title or is a payment of a forwarding fee or finders fee."

Section 62. Section 33-25-214, MCA, is amended to read:

**"33-25-214. Underwriting standards — record retention.** (1) A title insurer may not issue a title insurance policy unless it, its title *insurance producer*, or an approved attorney has conducted a reasonable search and examination of the title and made a determination of insurability of title in accordance with sound underwriting practices. The title insurer or title *insurance producer shall* preserve and retain in its files evidence of the examination of title and determination of insurability. The title insurer or title *insurance producer* may keep original evidence or may establish in the regular course of business a system of recording, copying, or reproducing evidence by any process that accurately and legibly reproduces, or forms a durable medium for reproducing, the contents of the original.

(2) Subsection (1) does not apply to:

(a) a title insurer assuming liability through a contract of reinsurance; or

(b) a title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with subsection (1).

(3) Except as allowed by rules adopted by the commissioner, *a* title insurer or title *insurance producer* may *not* knowingly issue an owner's title insurance policy or commitment to insure unless all outstanding enforceable recorded liens or other interests against the property title to be insured are shown.

(4) An insurer issuing a policy in violation of this section is estopped, as a matter of law, to deny the validity of the policy as to any claim or demand of the insured arising *under the policy*."

Section 63. Section 33-25-301, MCA, is amended to read:

**"33-25-301. Refusal, suspension, or revocation of title insurance producer's license.** (1) In addition to the causes provided in 33-17-1001, the commissioner may refuse to license a person as a title *insurance producer* or may suspend or revoke a title *insurance producer's* license if, after a hearing held after notice as required in 33-17-1001, he finds that the license applicant or licensee has:

(a) made a material misstatement in an application for a title *insurance producer* license;

(b) commingled funds belonging to applicants, escrow participants, or others;

(c) intentionally misrepresented the terms of a title insurance policy to an applicant or policyholder or has misrepresented material facts to, concealed material facts from, or made false statements to a party to an escrow, settlement, or closing transaction;

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(d) in the conduct of his affairs under his title *insurance producer's* license, used coercive practices or shown himself to be financially irresponsible;

(e) aided, abetted, or assisted another person in violating the provisions of this title or a rule adopted by the commissioner.

(2) The commissioner may impose any other appropriate penalty provided for in this title.

(3) The commissioner may refuse, suspend, or revoke the license of a *person* licensed as a title *insurance producer* for the actions described in subsection (1) of any individual designated in the license to exercise its powers."

Section 64. Section 33-25-302, MCA, is amended to read:

**"33-25-302. Disapproval of agency contracts.** (1) The commissioner may disapprove a title agency contract between a title *insurance producer* and title insurer, upon appropriate notice to the parties to the contract, if he finds that the contract, together with all amendments and related documents:

(a) does not provide for adequate monitoring of the *insurance producer's* financial transactions; or

(b) provides for inadequate, unreasonable, or excessive amounts to be paid to or retained by the title *insurance producer*. Factors the commissioner may consider in this determination include but are not limited to the *insurance producer's* duties under the contract and the general level of amounts paid to or retained by other title *insurance producers* in the state performing or assuming comparable duties.

(2) *A* person may *not* act as a title *insurance producer* under an agency contract that has been disapproved by the commissioner."

Section 65. Section 33-25-401, MCA, is amended to read:

**"33-25-401. Prohibited practices — referrals — splitting charges — exemptions.** (1) Except as provided in subsection (2), *a* person may *not*:

(a) give or accept a fee, rebate, or thing of value pursuant to an agreement or understanding that title insurance business will be referred to a title *insurance producer*; or

(b) give or accept a portion, split, or percentage of a charge made or received for title insurance business in connection with a transaction involving real property in this state, other than for services actually performed.

(2) (a) A person may pay a return on an investment, based on a percentage of an ownership interest in a title insurance agency, if:

(i) at or prior to the time of a referral, a disclosure of the existence of the arrangement is made to the person being referred and, in connection with the referral, the person is provided a written estimate of the charge

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or range of charges generally made by the title *insurance producer* to which the person is referred; and

(ii) the person is not required to use a particular *insurance producer.*

(b) The following arrangements are not a violation of subsection (2)(a)(ii):

(i) an arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by a lender to represent the lender's interest in a real estate transaction; or

(ii) an arrangement by which an attorney or law firm represents a client in a real estate transaction and issues or arranges for the issuance of a policy of title insurance in the transaction directly as *insurance producer* or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(c) Failure to disclose a controlled business relationship is not a violation of subsection (2)(a)(i) if the failure was not intentional and resulted from a bona fide error, proven by a preponderance of the evidence.

(3) This section does not prohibit:

(a) the payment of a fee to an attorney for services actually rendered or by a title *insurance producer* for services actually performed in the issuance of a title insurance policy; or

(b) payment of a bona fide salary, compensation, or other payment for goods or facilities actually furnished or for services actually performed."

Section 66. Section 33-25-403, MCA, is amended to read:

**"33-25-403. Prohibited practices — producer and associates — prohibition of favored insurance producer or insurer.** *A* producer or associate may *not*, directly or indirectly, require as a condition, agreement, or understanding of providing another person a loan, loan extension, credit, sale, property, contract, lease, or service that the other person obtain title insurance of any kind from a particular title insurer or title *insurance producer. A* title insurer or title *insurance producer* may *not* knowingly participate in a plan or transaction prohibited by this section."

Section 67. Section 33-22-1703, MCA, is amended to read:

**"33-22-1703. Definitions.** As used in this part, the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) his health would be in serious jeopardy;

(b) his bodily functions would be seriously impaired; or

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(c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as defined in 33-7-102;

(e) an administrator as defined in *33-17-102*; or

(f) any other entity regulated by the commissioner that provides health coverage.

(4) "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

(5) "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(7) "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

(8) "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

(9) "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing or paying for health care coverage."

Section 68. **Repealer.** Sections 33-17-202, 33-17-204, 33-17-205, 33-17-218, 33-17-402, 33-17-403, 33-17-601, and 33-17-1104, MCA, are repealed.

Section 69. **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

Section 70. **Codification instruction.** [Sections 4 through 6] are intended to be codified as an integral part of Title 33, chapter 17, and the provisions of Title 33, chapter 17, apply to [sections 4 through 6].

Section 71. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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Section 72. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 73. **Effective date.** [This act] is effective January 1, 1990.

Approved May 23, 1989.

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# APPROPRIATIONS

ENACTED BY THE

## Fifty-first Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1989

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# APPROPRIATIONS

## HOUSE BILL NO. 100

THE GENERAL APPROPRIATIONS ACT OF 1989 FOR THE APPROPRIATION OF MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1991.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Title.** This act may be cited as "The General Appropriations Act of 1989".

Section 2. **Definitions.** For the purposes of this act, unless otherwise stated, the following definitions apply:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the governor or his designated representative for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; appropriate legislative committees for legislative branch agencies; or the board of regents or its designated representative for the university system.

(3) "University system unit" means the office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the cooperative extension service with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, the bureau of mines and geology with central offices at Butte, the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula, or the fire services training school at Great Falls.

Section 3. **Other funds to offset general fund.** The approving authority shall decrease the general fund appropriation of the agency by the amount of funds received from other sources in excess of the appropriation provided in this act unless such action is expressly contrary to state or federal law, rule, or contract or unless the approving authority certifies that the services to be funded by the additional funds are significantly different from those for which the agency has received a general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which excess funds are received is increased in the same amount as the general fund is decreased.



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Section 4. **Expenditure limit.** Expenditures may not exceed appropriations.

Section 5. **Budget requests.** (1) Sufficient funds are appropriated in this act to enable each agency to submit its 1993 biennial budget request to the budget director and the legislative fiscal analyst pursuant to the time schedule established in 17-7-112(1). If any agency fails to submit its final, complete budget proposal by the deadlines established in 17-7-112(1), the expenditure authority granted in this act must be reduced or rescinded by the budget director unless the agency director certifies that an emergency situation has precluded a timely budget presentation and the budget director approves an extension of the deadlines, not to exceed 30 days.

(2) Employees added through the appropriation of federal or state special revenues or proprietary funds in this act may not be included in the current level budget presented to the 1991 legislature if their continued employment requires general fund support.

Section 6. **Detailed budget information.** Within 2 days after submission of the preliminary executive budget to the legislative fiscal analyst, the budget director shall give the legislative fiscal analyst the preliminary expenditure recommendations by object of expenditure to the second level of detail and by funding source detailed by accounting entity. Within 1 day after the legislative finance committee presents the budget analysis to the 52nd legislature, the budget director and the legislative fiscal analyst shall mutually exchange expenditure recommendations by object of expenditure to the second level of detail and by funding sources detailed by accounting entity. This final information must be filed in the respective offices and available to members of the legislature and the general public.

Section 7. **Operating budget.** (1) Expenditures by a state agency must be made in substantial compliance with an operating budget approved by an approving authority as defined in 17-7-401. Substantial compliance means that no category in the approved operating budget may be exceeded by more than 5%, provided that no funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may be expended under any other category except if the approving authority approves a specific agency request justified on the basis of documented cost savings or except as specified in subsection (3). The approving authority shall submit its analysis of the documented cost savings to the legislative auditor. Wages and fringe benefits must be separately documented from other cost savings. The legislative audit committee shall review the approving authority's analysis and report to the 52nd legislature on potential long-term budget impacts. The expenditure of money appropriated by this act is contingent upon approval of the operating budget by August 1 of each fiscal year. An approved original operating budget must comply with legislative intent as expressed in state law and legislative statements of intent. Legislative intent for the general appropriations act includes the narrative that accompanies this act.

(2) The operating budget for money appropriated by this act must be separate from the operating budget for money appropriated by any other act except any act appropriating money specifically to fund the state pay

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plan or any portion thereof. Each operating budget must include expenditures for each agency program, detailed at least by the categories of personal services, operating expenses, equipment, benefits and claims, grants, transfers, and local assistance. In no case may the personal services category detail include an amount less than the amount indicated in the personal services detail included in the narrative that accompanies this act plus money appropriated to fund the state employee pay plan, except as specified in subsection (3). Each agency shall record its operating budgets and any approved changes on the statewide budget and accounting system. Forms used for changing an operating budget must reference the current fully completed and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget.

(3) If an agency is unable to recruit and hire professional positions funded in the appropriation, funds appropriated for personal services may be used to fund an agreement or contract to provide services that are identical to those services performed by an authorized position. The amount used for the agreement or contract may not be more than the amount authorized for the position less any vacancy savings requirement. The agency director shall certify to the approving authority or his designated representative that the agency is unable to fill the position and that the services performed by that position are necessary.

Section 8. **Program transfers.** Unless prohibited by this act or by statute, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. The transfer amount may not exceed 5% of the total agency appropriation. The transfer may not include money appropriated for personal services. All program transfers must be completed within the same fund from where the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the legislative fiscal analyst. Upon approval of the transfer, the approving authority shall inform the fiscal analyst of the approved transfer and the justification for the transfer.

Section 9. **Reorganization.** If any agency reorganizes during the 1991 biennium, the agency shall present for fiscal 1990 and 1991 by program:

(1) a restatement of the FTE records and financial records consistent with the reorganized structure; and

(2) a comparison of the original operating budget to the revised operating budget which reflects the reorganization. Reorganization means transfers of functions or five or more FTE from one program to another.

Section 10. **Reduction of appropriation.** In the event of a shortfall in revenue, the governor may reduce any or all appropriations. No appropriation may be reduced by more than 15%. The following appropriations may not be reduced:

(1) payment of interest and retirement of state debt;

(2) the legislative branch;

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(3) the judicial branch;

(4) school foundation program, including special education; or

(5) salaries of elected officials during their terms of office.

Section 11. **Access to records of contracting entities.** (1) Unless a contract made with a nonstate entity complies with subsection (2), no money appropriated by this act may be expended for such contract. Such contract to provide a service to members of the public on behalf of the state may be either written or oral.

(2) A contract described in subsection (1) must contain a provision to allow access, for legislative audit and fiscal analysis, to the records of the contracting nonstate entity sufficient to determine whether the parties to the contract have complied with the terms of the contract. Such an audit and fiscal analysis require access to records necessary to carry out the legislative audit and analysis functions set out in Title 5, chapters 12 and 13.

(3) The state may unilaterally terminate any contract upon refusal by the contracting nonstate entity to allow access to its records necessary to carry out such a legislative audit or analysis.

Section 12. **Coal severance tax income fund.** The coal severance tax income fund, unless appropriated by another act of the 51st legislature, is appropriated to the general fund for use during the biennium ending June 30, 1991.

Section 13. **Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of this act.

Section 14. **Audit costs.** Amounts appropriated for audits may be transferred between fiscal years. Agencies shall reserve enough cash in each fund to pay for audit costs and shall to the maximum extent allowable under federal regulations charge audit costs to federal funds.

Section 15. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 16. **Appropriations.** The following money is appropriated for the respective fiscal years:

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A. GENERAL GOVERNMENT AND HIGHWAYS

| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| **LEGISLATIVE AUDITOR** | | | | | | | | | | |
| 1. Operations | 1,031,677 | 1,035,000 | | | 2,066,677 | 1,009,581 | 1,051,636 | | | 2,061,217 |
| 2. Lottery Consulting Services | | 16,000 | | | 16,000 | | | | | |
| Total | 1,031,677 | 1,051,000 | | | 2,082,677 | 1,009,581 | 1,051,636 | | | 2,061,217 |

Item 2 is contingent upon the state lottery implementing an automated lotto-type game.

Item 2 is a biennial appropriation.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **LEGISLATIVE FISCAL ANALYST** | | | | | | | | | | |
| 1. Operations | 753,169 | | | | 753,169 | 831,482 | | | | 831,482 |
| 2. Consultants | 20,000 | | | | 20,000 | | | | | |
| 3. Intern Analyst | 12,675 | | | | 12,675 | | | | | |
| 4. Committee Meeting Days | 13,600 | | | | 13,600 | | | | | |
| 5. Data Processing | 15,000 | | | | 15,000 | | | | | |
| Total | 814,444 | | | | 814,444 | 831,482 | | | | 831,482 |

Items 2 through 5 are biennial appropriations.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **LEGISLATIVE COUNCIL** | | | | | | | | | | |
| 1. Operations | 1,732,382 | | | | 1,732,382 | 2,103,582 | | | | 2,103,582 |
| 2. Reimbursable Activities | | 687,035 | | | 687,035 | | | | | |
| 3. NCSL Dues and Travel | 119,701 | | | | 119,701 | | | | | |
| 4. CSG Dues and Travel | 109,509 | | | | 109,509 | | | | | |
| 5. Districting and Apportionment Committee | 6,287 | | | | 6,287 | | | | | |
| 6. Interim Studies | 45,600 | | | | 45,600 | | | | | |
| 7. Statewide Issues | 10,000 | | | | 10,000 | | | | | |
| 8. Revenue Oversight Committee | 30,000 | | | | 30,000 | | | | | |
| 9. Administrative Code Committee | 14,000 | | | | 14,000 | | | | | |
| 10. Five-State Biennial Conference | 16,498 | | | | 16,498 | | | | | |
| 11. Forestry Task Force | 8,000 | | | | 8,000 | | | | | |
| 12. Coal Tax Subcommittee | | 12,000 | | | 12,000 | | | | | |
| 13. Montana-Western Canadian Provinces Boundary Advisory Committee | 2,000 | | | | 2,000 | | | | | |
| Total | 2,093,977 | 699,035 | | | 2,793,012 | 2,103,582 | | | | 2,103,582 |

Items 2 through 13 are biennial appropriations. The legislative council may approve transfers of funds between items 3 through 13. Such transfers may not exceed 15% of the amount in each item.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **CONSUMER COUNSEL** | | | | | | | | | | |
| 1. Operations | | 763,903 | | | 763,903 | | 777,471 | | | 777,471 |
| 2. Contract Services | | 100,000 | | | 100,000 | | 100,000 | | | 100,000 |
| Total | | 863,903 | | | 863,903 | | 877,471 | | | 877,471 |

Item 2 is for expert witness fees for unanticipated cases.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| ENVIRONMENTAL QUALITY COUNCIL | | | | | | | | | | |
| 1. EQC Program | 244,838 | | | | 244,838 | 241,535 | | | | 241,535 |
| 2. Water Policy Committee | | 26,200 | | | 26,200 | | | | | |
| Total | 244,838 | 26,200 | | | 271,038 | 241,535 | | | | 241,535 |

Item 2 is a biennial appropriation.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| JUDICIARY | | | | | | | | | | |
| 1. Supreme Court Operations | | | | | | | | | | |
| a. Operations | 1,380,341 | | | | 1,380,341 | 1,386,056 | | | | 1,386,056 |
| b. Audit | 16,518 | | | | 16,518 | | | | | |
| 2. Boards and Commissions | 201,727 | | | | 201,727 | 205,862 | | | | 205,862 |
| 3. Law Library | 690,798 | | | | 690,798 | 681,172 | | | | 681,172 |
| 4. District Court Operations | 2,294,358 | | | | 2,294,358 | 2,360,138 | | | | 2,360,138 |
| 5. Water Courts | | | | | | | | | | |
| a. Operations | | 421,654 | | | 421,654 | | 412,220 | | | 412,220 |
| b. Audit | | 1,835 | | | 1,835 | | | | | |
| Total | 4,583,742 | 423,489 | | | 5,007,231 | 4,633,228 | 412,220 | | | 5,045,448 |
| GOVERNOR'S OFFICE | | | | | | | | | | |
| 1. Executive Office Program | | | | | | | | | | |
| a. Operations | 967,598 | 120,604 | 20,000 | | 1,108,202 | 956,208 | 80,000 | 20,000 | | 1,056,208 |
| b. Audit | 12,867 | | | | 12,867 | | | | | |
| 2. Mansion Maintenance | 70,442 | | | | 70,442 | 57,495 | | | | 57,495 |
| 3. Air Transportation | 353,013 | | | | 353,013 | 353,013 | | | | 353,013 |
| 4. Office of Budget and Program Planning | | | | | | | | | | |
| a. Operations | 754,390 | | | | 754,390 | 824,403 | | | | 824,403 |
| b. Audit | 17,987 | | | | 17,987 | | | | | |
| 5. Pacific Northwest Electric Power and Conservation Planning Council | | | 382,914 | | 382,914 | | | 383,822 | | 383,822 |
| 6. Lieutenant Governor | 204,446 | | | | 204,446 | 204,077 | | | | 204,077 |
| 7. Citizens' Advocate Office | 66,853 | | | | 66,853 | 66,760 | | | | 66,760 |
| 8. Board of Visitors | 129,765 | | 40,000 | | 169,765 | 130,060 | | 40,000 | | 170,060 |
| 9. Montana Statehood Centennial Office | 50,000 | 558,972 | | | 608,972 | | 28,891 | | | 28,891 |
| Total | 2,627,361 | 679,576 | 442,914 | | 3,749,851 | 2,592,016 | 108,891 | 443,822 | | 3,144,729 |

Item 9 includes a $150,000 donation from Burlington Northern. The agency shall allocate at least $75,000 of the donation to the centennial memory project as restricted by the donor. The remaining funds may be spent as determined by the statehood centennial commission.

Item 9 includes $150,000 from the general fund. It is the intent of the legislature that all funds remaining in the centennial state special revenue account at the end of fiscal 1991 revert to the general fund.

The governor's office is hereby authorized to purchase an aircraft. The cost of the aircraft, including all interest and finance charges, may not exceed $715,000.

SECRETARY OF STATE
1. Records Management
   a. Operations

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| | 895,656 | | | | 895,656 | 907,726 | | | | 907,726 |
| b. Audit | | | | | | | | | | |
| | 10,362 | | | | 10,362 | | | | | |
| 2. Administrative Code | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 164,352 | | | | 164,352 | | 160,811 | | | 160,811 |
| b. Audit | | | | | | | | | | |
| | 2,920 | | | | 2,920 | | | | | |
| Total | | | | | | | | | | |
| | 906,018 | 167,272 | | | 1,073,290 | 907,726 | 160,811 | | | 1,068,537 |

In the event that a cost-saving in-house data processing system for UCC transactions is not online by July 1, 1989, as scheduled, additional spending authority may be requested through a budget amendment.

COMMISSIONER OF POLITICAL PRACTICES

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1. Administration | | | | | | | | | | |
| | 103,502 | | | | 103,502 | 106,614 | | | | 106,614 |
| 2. Audit | | | | | | | | | | |
| | 2,214 | | | | 2,214 | | | | | |
| Total | | | | | | | | | | |
| | 105,716 | | | | 105,716 | 106,614 | | | | 106,614 |

The commissioner of political practices is to charge a fee for the Summary of Contributions/Expenditures for Candidates/Committees booklet that is sufficient to recover the costs of printing and distribution of the booklet. Public libraries are exempt from the charge for the books. The proceeds from the sale of the booklet as well as the fees collected for reimbursement of copier charges must be deposited in the general fund.

STATE AUDITOR

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1. Central Management Division | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 222,232 | | | | 222,232 | 221,157 | | | | 221,157 |
| b. Audit | | | | | | | | | | |
| | 2,811 | | | | 2,811 | | | | | |
| 2. Audit Division | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 625,257 | 376,189 | | | 1,001,446 | 604,640 | 393,155 | | | 997,795 |
| b. Audit | | | | | | | | | | |
| | 30,383 | 24,904 | | | 55,287 | | | | | |
| c. P/P/P Online Conversion | | | | | | | | | | |
| | 204,000 | | | | 204,000 | | | | | |
| d. Warrant System Remodeling | | | | | | | | | | |
| | 41,989 | | | | 41,989 | 1,000 | | | | 1,000 |
| e. Warrant System Processing Costs | | | | | | | | | | |
| | 82,500 | | | | 82,500 | 82,500 | | | | 82,500 |
| f. Uniform University Payroll System | | | | | | | | | | |
| | 25,000 | | | | 25,000 | | | | | |
| 3. Insurance Division | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 908,371 | | | | 908,371 | 902,244 | | | | 902,244 |
| b. Audit | | | | | | | | | | |
| | 9,298 | | | | 9,298 | | | | | |
| 4. Securities Division | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 272,740 | | | | 272,740 | 271,671 | | | | 271,671 |
| b. Audit | | | | | | | | | | |
| | 3,166 | | | | 3,166 | | | | | |
| c. Computer System | | | | | | | | | | |
| | 40,000 | | | | 40,000 | | | | | |
| Total | | | | | | | | | | |
| | 2,467,747 | 401,093 | | | 2,868,840 | 2,083,212 | 393,155 | | | 2,476,367 |

Item 4c is a biennial appropriation.

The appropriation in item 4c is for a computer system. The agency shall follow the system design recommendation approved by the information services division of the department of administration.

DEPARTMENT OF JUSTICE

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1. Legal Services | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 905,795 | | | | 905,795 | 888,649 | | | | 888,649 |
| b. Case-Related Travel | | | | | | | | | | |
| | 9,500 | | | | 9,500 | 9,500 | | | | 9,500 |

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| 2. Indian Legal Jurisdiction | | | | | | | | | | |
| a. Operations | 67,536 | | | | 67,536 | 67,573 | | | | 67,573 |
| b. Legal Fees and Expert Witness | 100,000 | | | | 100,000 | | | | | |
| 3. County Prosecutor Services | 137,909 | | | | 137,909 | 138,135 | | | | 138,135 |
| 4. Agency Legal Services | | | | 511,823 | 511,823 | | | | 559,432 | 559,432 |
| 5. Driver Services Bureau | 2,333,599 | 71,000 | 203,131 | | 2,607,730 | 2,317,856 | 71,000 | 182,424 | | 2,571,280 |
| 6. Highway Patrol | | | | | | | | | | |
| a. Operations | | 9,592,582 | | | 9,592,582 | | 9,464,124 | | | 9,464,124 |
| b. Cadets | | 144,291 | | | 144,291 | | 87,605 | | | 87,605 |
| c. Communications Bureau | | 634,242 | | | 634,242 | | 650,837 | | | 650,837 |
| d. MCSAP | | 61,600 | 371,712 | | 433,312 | | 58,600 | 353,599 | | 412,199 |
| e. 65 MPH Enforcement | | | 142,748 | | 142,748 | | | 143,568 | | 143,568 |
| 7. Vehicle Registration | 2,170,819 | | | | 2,170,819 | 2,143,799 | | | | 2,143,799 |
| 8. Law Enforcement Services Administration | 81,252 | | | | 81,252 | 80,947 | | | | 80,947 |
| 9. County Attorney Payroll | 952,316 | | | | 952,316 | 952,672 | | | | 952,672 |
| 10. Law Enforcement Academy | 522,802 | | 90,000 | | 612,802 | 533,413 | | | | 533,413 |
| 11. Fire Marshal | 342,959 | | | | 342,959 | 329,858 | | | | 329,858 |
| 12. Identification Program | 236,704 | | | | 236,704 | 239,231 | | | | 239,231 |
| 13. Criminal Investigators | | | | | | | | | | |
| a. Operations | 188,069 | 46,314 | 32,000 | | 266,383 | 188,230 | 35,971 | 32,000 | | 256,201 |
| b. General Investigator | 52,815 | | | | 52,815 | 40,839 | | | | 40,839 |
| 14. Special Investigation — East | | 305,065 | | | 305,065 | | 305,278 | | | 305,278 |
| 15. Special Investigation — West | 115,015 | | 345,043 | | 460,058 | 232,848 | | 232,848 | | 465,696 |
| 16. Central Services | | | | | | | | | | |
| a. Operations | 166,907 | 178,200 | | 7,667 | 352,774 | 165,870 | 178,125 | | 7,768 | 351,763 |
| b. Audit | 13,359 | 14,266 | | 613 | 28,238 | | | | | |
| 17. Data Processing Program | 669,936 | 268,910 | | | 938,846 | 671,864 | 264,979 | | | 936,843 |
| 18. Extradition and Transfer of Prisoners | 146,869 | | | | 146,869 | 146,875 | | | | 146,875 |
| 19. Forensic Science Division | 777,250 | 188,674 | 60,000 | | 1,025,924 | 726,725 | 189,224 | 48,000 | | 963,949 |
| Total | 9,991,411 | 11,505,144 | 1,244,634 | 520,103 | 23,261,292 | 9,874,884 | 11,305,743 | 992,439 | 567,200 | 22,740,266 |

Items 2b and 16b are biennial appropriations.

Item 6c is to operate the regional dispatch centers. The department of justice shall implement a cost allocation plan for the purpose of recovering the operational cost of regional dispatch centers from all user agencies on an equitable basis. It is intended that after fiscal 1989 the highways state special revenue account should be reimbursed for services provided to user agencies that are not funded by the highways state special revenue account. Revenues collected as reimbursement from user agencies for operational costs of the regional dispatch centers must be deposited in the highways state special revenue account and must equal at least 5% of the total amount of item 6c.

The work of the workers' compensation fraud investigator position must include investigations of both employee and employer fraud cases.

HIGHWAY TRAFFIC SAFETY

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1. Operations | 200,000 | 70,750 | 1,103,557 | | 1,374,307 | 200,000 | 72,000 | 1,103,355 | 1,375,355 |
| 2. Audit | | 1,250 | 1,250 | | 2,500 | | | | |

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| Total | 200,000 | 72,000 | 1,104,807 | | 1,376,807 | 200,000 | 72,000 | 1,103,355 | | 1,375,355 |
| BOARD OF CRIME CONTROL | | | | | | | | | | |
| 1. Operations | 380,742 | 57,374 | 142,500 | | 580,616 | 380,592 | 55,905 | 142,500 | | 578,997 |
| 2. Audit | 9,522 | | | | 9,522 | | | | | |
| 3. Juvenile Justice Pass-Through Grants | | | 242,500 | | 242,500 | | | 242,500 | | 242,500 |
| 4. Bureau of Justice Assistance Pass-Through Grants | | | 396,000 | | 396,000 | | | 396,000 | | 396,000 |
| 5. Victims' Assistance Pass-Through Grants | | | 224,000 | | 224,000 | | | 224,000 | | 224,000 |
| 6. Drug Enforcement/Education Pass-Through Grants | | | 1,667,000 | | 1,667,000 | | | 1,667,000 | | 1,667,000 |
| 7. Crime Victims' Compensation | | 257,000 | 118,000 | | 375,000 | | 375,000 | | | 375,000 |
| 8. Tuition/Assistance Fees | 45,000 | | | | 45,000 | 45,000 | | | | 45,000 |
| Total | 435,264 | 314,374 | 2,790,000 | | 3,539,638 | 425,592 | 430,905 | 2,672,000 | | 3,528,497 |

Items 2 through 6 are biennial appropriations.

All remaining appropriation authority for the 1989 biennium federal pass-through grant authority is authorized to continue into fiscal 1990 and fiscal 1991.

The board of crime control shall charge tuition and fees sufficient to reimburse the general fund for costs associated with the juvenile justice training program and for technical assistance provided to local law enforcement agencies as appropriated in item 8. The tuition and fees collected are to be deposited in the general fund.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF REVENUE | | | | | | | | | | |
| 1. Director's Office | | | | | | | | | | |
| a. Operations | 304,459 | 84,235 | | | 388,694 | 307,942 | 84,243 | | | 392,185 |
| b. Audit | 80,940 | | | 26,979 | 107,919 | | | | | |
| c. Legal Bureau | 230,418 | | | 51,786 | 282,204 | 230,552 | | | 51,787 | 282,339 |
| 2. Centralized Services | 797,557 | | 6,570 | | 804,127 | 754,999 | | 6,571 | | 761,570 |
| 3. Data Processing Division | 1,029,022 | | | 440,900 | 1,469,922 | 1,035,436 | | | 440,912 | 1,476,348 |
| 4. Investigations and Enforcement Division | | | | | | | | | | |
| a. Administration | 21,964 | 12,154 | 34,763 | 8,356 | 77,237 | 22,608 | 12,176 | 34,203 | 8,370 | 77,357 |
| b. Investigations Program | 32,857 | 243,141 | 133,284 | 262,855 | 672,137 | 32,692 | 241,921 | 132,692 | 261,536 | 668,841 |
| 5. Income and Miscellaneous Tax Division | 3,168,446 | 160,476 | | | 3,328,922 | 3,125,142 | 160,137 | | | 3,285,279 |
| 6. Natural Resources and Corporation Tax Division | 1,174,372 | 60,992 | 143,252 | | 1,378,616 | 1,177,682 | 60,999 | 143,271 | | 1,381,952 |
| 7. Property Assessment Division | | | | | | | | | | |
| a. Elected Assessors | 1,503,742 | | | | 1,503,742 | 1,504,868 | | | | 1,504,868 |
| b. Appraisers and Nonelected Assessors | 7,628,127 | | | | 7,628,127 | 7,628,631 | | | | 7,628,631 |
| c. Property Assessment — Administration | 531,043 | | | | 531,043 | 531,197 | | | | 531,197 |
| d. Property Assessment — Helena | 1,120,189 | | | | 1,120,189 | 1,032,065 | | | | 1,032,065 |
| 8. Motor Fuels Tax Division | | 658,582 | | | 658,582 | | 646,407 | | | 646,407 |
| Total | 17,623,136 | 1,219,580 | 317,869 | 790,876 | 19,951,461 | 17,383,814 | 1,205,883 | 316,737 | 762,605 | 19,669,039 |

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| Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |

Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated. During the 1991 biennium, the division shall attempt to return at least 10% of net sales. Net sales are gross sales less discounts and all taxes collected. The division shall limit operational expenses of the liquor merchandising system to not more than 15% of net sales. Operational expenses may not include product costs, freight charges, expenses allocable to other divisions, or licensing bureau expenses.

The department of revenue shall provide its proposed reappraisal plan for the fourth reappraisal cycle, scheduled to commence January 1, 1993, to the 52nd legislature. In addition to the content requirements listed in 15-7-111, the proposed plan must, at a minimum, include:

(1) any changes proposed by the department to the property revaluation process described in Title 15, chapter 7;

(2) a list of all tasks necessary to accomplish reappraisal;

(3) the estimated time necessary for each task;

(4) the estimated resources for each year of the reappraisal cycle necessary to complete reappraisal on a timely basis and all supporting assumptions and documentation used to develop the cost estimate.

The 1993 biennium budget request submitted by the department of revenue, property assessment division, must clearly identify, by year, the costs necessary to complete the third reappraisal cycle and the costs necessary to implement the fourth reappraisal cycle.

DEPARTMENT OF ADMINISTRATION

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1. Director's Office | | | | | | | | | |
| | 259,953 | | 60,000 | 319,953 | 261,619 | | | 59,864 | 321,483 |
| 2. Architecture and Engineering Division | | | | | | | | | |
| a. Operations | | | | | | | | | |
| | 565,743 | | 566,926 | 1,132,669 | | 571,124 | | 571,125 | 1,142,249 |
| b. Audit | | | | | | | | | |
| | 1,183 | | | 1,183 | | | | | |
| 3. Procurement and Printing Division | | | | | | | | | |
| a. Publications and Graphics Bureau — Purchasing and Print Coordinator | | | | | | | | | |
| i. Operations | | | | | | | | | |
| | | | 75,372 | 75,372 | | | | 75,898 | 75,898 |
| ii. Private Vendor Pass Through | | | | | | | | | |
| | | | 3,284,376 | 3,284,376 | | | | 3,754,862 | 3,754,862 |
| b. Publications and Graphics Bureau — Operations | | | | | | | | | |
| | | | 1,073,654 | 1,073,654 | | | | 1,244,955 | 1,244,955 |
| c. Publications and Graphics Bureau — Administration | | | | | | | | | |
| i. Operations | | | | | | | | | |
| | | | 466,360 | 466,360 | | | | 482,267 | 482,267 |
| ii. Photocopy Pool Pass Through | | | | | | | | | |
| | | | 315,000 | 315,000 | | | | 315,000 | 315,000 |
| iii. Audit | | | | | | | | | |
| | | | 9,692 | 9,692 | | | | | |
| d. Property and Supply Bureau | | | | | | | | | |
| i. Operations | | | | | | | | | |
| | | | 3,177,169 | 3,177,169 | | | | 3,483,346 | 3,483,346 |
| ii. Audit | | | | | | | | | |
| | | | 6,380 | 6,380 | | | | | |
| e. Purchasing Bureau | | | | | | | | | |
| | 435,519 | | | 435,519 | 413,764 | | | | 413,764 |
| 4. Information Services Division | | | | | | | | | |
| a. Resource Management Administration Program | | | | | | | | | |
| i. Operations | | | | | | | | | |
| | | | 309,367 | 309,367 | | | | 308,986 | 308,986 |
| ii. Audit | | | | | | | | | |
| | | | 33,535 | 33,535 | | | | | |
| iii. Uniform University Payroll System | | | | | | | | | |
| | 625,000 | | 625,000 | 1,250,000 | | | | | |
| b. Central Computer Operations Program | | | | | | | | | |
| | | | 6,228,691 | 6,228,691 | | | | 6,315,806 | 6,315,806 |
| c. Information Center Program | | | | | | | | | |
| | | | 523,597 | 523,597 | | | | 524,470 | 524,470 |
| d. Systems Development Program | | | | | | | | | |
| i. Operations | | | | | | | | | |
| | | | 872,242 | 872,242 | | | | 833,862 | 833,862 |

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Tota |
| ii. Contract Programming | | | | 200,000 | 200,000 | | | | | |
| e. Telecommunications | | | | | | | | | | |
| i. Operations | | | | 7,990,881 | 7,990,881 | | | | 8,222,521 | 8,222,521 |
| ii. Audit | | | | 17,484 | 17,484 | | | | | |
| f. 911 Emergency Service | | | | 74,900 | 74,900 | | | | 74,900 | 74,900 |
| 5. General Services Division | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 379,244 | | | 3,321,658 | 3,700,902 | 381,567 | | | 3,347,328 | 3,728,895 |
| b. Audit | | | | 6,309 | 6,309 | | | | | |
| 6. Mail and Management Program | | | | | | | | | | |
| a. Operations | | | | 1,330,689 | 1,330,689 | | | | 1,376,529 | 1,376,529 |
| b. Audit | | | | 2,484 | 2,484 | | | | | |
| 7. Treasury Central Services Division | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 408,337 | | | 30,748 | 439,085 | 409,113 | | | 30,886 | 439,999 |
| b. Audit | | | | | | | | | | |
| | 7,405 | | | | 7,405 | | | | | |
| 8. Accounting Division | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 653,077 | | | | 653,077 | 645,005 | | | | 645,005 |
| b. Audit | | | | | | | | | | |
| | 24,904 | | | | 24,904 | | | | | |
| 9. Personnel Division | | | | | | | | | | |
| a. Personnel Program | | | | | | | | | | |
| | 867,647 | | | | 867,647 | 869,735 | | | | 869,735 |
| b. Group Benefits Program | | | | | | | | | | |
| i. Operations | | | | | | | | | | |
| | 27,225 | | | 319,405 | 346,630 | 31,284 | | | 288,150 | 319,434 |
| ii. Audit | | | | 568 | 568 | | | | | |
| c. Training Program | | | | | | | | | | |
| i. Operations | | | | 181,246 | 181,246 | | | | 181,946 | 181,946 |
| ii. Audit | | | | 364 | 364 | | | | | |
| 10. Tort Claims Division | | | | | | | | | | |
| a. Operations | | | | 3,050,950 | 3,050,950 | | | | 3,034,518 | 3,034,518 |
| b. Audit | | | | 9,416 | 9,416 | | | | | |
| 11. Workers' Compensation Court | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 305,487 | | | | 305,487 | | 302,936 | | | 302,936 |
| b. Audit | | | | | | | | | | |
| | 647 | | | | 647 | | | | | |
| 12. State Tax Appeal Board | | | | | | | | | | |
| a. State Board Operations | | | | | | | | | | |
| | 210,883 | | | | 210,883 | 209,465 | | | | 209,465 |
| b. County Board Operations | | | | | | | | | | |
| | 207,977 | | | | 207,977 | 208,751 | | | | 208,751 |
| 13. Public Employees' Retirement Division | | | | | | | | | | |
| a. Operations | | | | 850,161 | 850,161 | | | | 739,168 | 739,168 |
| b. Audit | | | | 32,791 | 32,791 | | | | | |
| 14. Teachers' Retirement System | | | | | | | | | | |
| a. Operations | | | | 489,868 | 489,868 | | | | 442,781 | 442,781 |
| b. Audit | | | | 17,987 | 17,987 | | | | | |
| Total | | | | | | | | | | |
| | 4,107,171 | 873,060 | | 35,555,270 | 40,535,501 | 3,430,303 | 874,060 | | 35,709,168 | 40,013,5 |

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| | Fiscal 1990 | | | | Fiscal 1991 | | | |
|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |

The appropriation in item 2a in the proprietary column is appropriated from the capital projects fund.

Item 4dii is a biennial appropriation for contract programming.

Item 4aiii is a biennial appropriation for the study and implementation of a uniform payroll, personnel, and position control system for the Montana university system. This appropriation includes 2.0 FTE systems development positions to conduct the study and implement the uniform payroll, personnel, and position control system. This original operational plan is to be presented to the legislative finance committee by August 1, 1989, for review. Any revised operational plan must also be presented for review. The postsecondary study committee shall monitor the implementation of the uniform payroll, personnel, and position control system.

Item 4b includes 2.0 FTE data entry operators, grade 7, step 5, that are used to input data on the P/P/P system. These FTE may not be included in the 1993 biennium current level budget submitted by the department of administration.

The appropriation in item 5a in the proprietary column includes $58,801 in fiscal 1990 and $58,801 in fiscal 1991 from the capital projects fund.

In item 5, the department may charge a maximum of $3.17 per square foot in fiscal 1990 and $3.19 per square foot in fiscal 1991. At the end of fiscal 1991, the maximum working capital the department may carry over is $320,000.

In item 6, the department may charge a maximum overhead rate of 7% in fiscal 1990 and 6% in fiscal 1991.

The amounts listed in items 13 and 14 are appropriated from the pension trust fund.

The department may expend available self-insurance reserves and revenues to pay any deficit that may be incurred for property or liability insurance premiums due and payable through June 30, 1991.

Funds remaining in the capitol land grant account of the capital projects fund, after the appropriation has been met for the general services division of the department of administration, are appropriated to the long-range building debt service fund for the payment of principal and interest on bonds issued for public buildings at the capitol for executive, legislative, and judicial purposes, as outlined in section 12 of The Enabling Act. This appropriation is for the biennium ending June 30, 1991, and is not to exceed the annual debt service required on these bonds.

The department of administration shall develop a cost recovery plan for proprietary operations. It is the intent of the legislature that the cost of each service provided should be fully recovered through the rate charged for each service. The plans must be submitted with the department's 1993 biennium budget request and must, at a minimum, include the following information:

(1) identification of the goods or services, or both, that are provided by the program, how the service level is measured, and the anticipated service level for the 1993 biennium;

(2) the proposed rates by service for each year of the 1993 biennium;

(3) a description and explanation of how rates are established, including identification of all relevant costs, service levels, personnel efficiency ratios, and all other assumptions used in rate development.

The following operations shall develop a cost recovery plan as described above:

(1) publications and graphics;

(2) property and supply;

(3) information services division;

(4) central mail.

Contingent on passage and approval of HB 234, the public employees' retirement division is appropriated $4,480 in pension trust funds for fiscal 1990 only.

DEPARTMENT OF HIGHWAYS

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1. General Operations | | | | | | | | |
| a. Operations | 6,219,196 | 1,936,000 | | 8,155,196 | 6,170,406 | 1,895,467 | | 8,065,873 |
| b. Audit | 69,250 | | | 69,250 | | | | |
| 2. Construction | 64,022,021 | 103,729,301 | | 167,751,322 | 55,649,084 | 82,842,105 | | 138,491,189 |
| 3. Maintenance | 44,431,441 | | | 44,431,441 | 44,991,651 | | | 44,991,651 |
| 4. Preconstruction | 5,192,462 | 9,559,047 | | 14,751,509 | 6,112,716 | 11,398,075 | | 17,510,791 |
| 5. Motor Pool | | | 1,038,063 | 1,038,063 | | | 1,018,462 | 1,018,462 |
| 6. Equipment | | | 12,867,421 | 12,867,421 | | | 12,901,891 | 12,901,891 |

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | |
|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| 7. Interfund Transfers | | 27,962,094 | | 163,653 | 28,125,747 | | 25,655,637 | | | 25,655,637 |
| 8. Stores Inventory | | 12,651,128 | | | 12,651,128 | | 12,744,300 | | | 12,744,300 |
| 9. Gross Vehicle Weight Division | | 3,585,815 | | | 3,585,815 | | 3,607,210 | | | 3,607,210 |
| Total | | 164,133,407 | 115,224,348 | 14,069,137 | 293,426,892 | | 154,931,004 | 96,135,647 | 13,920,353 | 264,987,004 |

The department is directed to submit to the 1991 legislature a construction work plan for the 1993 biennium that is detailed by year and project. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1993 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year and project.

The department may adjust appropriations and FTE in the construction, preconstruction, interfund transfers, and maintenance programs between fiscal years and funding sources to reflect actual expenditures related to the construction work plan and maintenance activities.

Item 3 includes an appropriation of $473,272 in each fiscal year for damage repairs from insurance proceeds. In the event the insurance proceeds received exceed the amounts appropriated to the department of highways for fiscal 1990 and fiscal 1991, the additional funds are appropriated.

Item 4 includes $2,395,500 in fiscal 1990 and $2,442,500 in fiscal 1991 for consultant and professional services. Item 4 also includes $4,451,390 in fiscal 1990 and $7,105,100 in fiscal 1991 for right-of-way purchases. The above amounts may be expended for the prescribed purposes only and may not be transferred to any other program. The funds in item 4 for consultant and professional services and for right-of-way purchases that are not expended for the prescribed purposes must revert.

Contingent upon passage of HB 774, there is appropriated $150,000 a year for the 1990-91 biennium from the highway special revenue fund to the maintenance program.

DEPARTMENT OF MILITARY AFFAIRS

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1. Administration Program | | | | | | | | |
| a. Operations | 200,613 | | 200,613 | 203,028 | | | | 203,028 |
| b. Audit | 5,188 | | 5,188 | | | | | |
| 2. Army National Guard | | | | | | | | |
| a. Operations | 797,794 | 819,202 | 1,616,996 | 808,758 | | 829,630 | | 1,638,388 |
| b. Reorganization | 138,880 | | 138,880 | 138,883 | | | | 138,883 |
| 3. Air National Guard | 127,862 | 1,347,644 | 1,475,506 | 131,029 | | 1,358,806 | | 1,489,835 |
| 4. Disaster Coordination | | | | | | | | |
| a. Operations | 222,128 | 239,491 | 461,619 | 219,783 | | 237,147 | | 456,930 |
| b. Audit | 3,755 | 3,755 | 7,510 | | | | | |
| c. Hazardous Materials Training | 12,000 | 48,000 | 60,000 | | 12,000 | 48,000 | | 60,000 |
| 5. Emergency Management | | | | | | | | |
| a. Operations | | 258,756 | 258,756 | | | 259,051 | | 259,051 |
| b. Audit | | 2,868 | 2,868 | | | | | |
| 6. Local Civil Defense Reimbursement | | 2,000,000 | 2,000,000 | | | 2,000,000 | | 2,000,000 |
| 7. Veterans' Affairs | | | | | | | | |
| a. Operations | 449,877 | 45,916 | 495,793 | 448,598 | | 43,920 | | 492,518 |
| b. Audit | 5,188 | | 5,188 | | | | | |
| Total | 1,951,285 | 12,000 4,765,632 | 6,728,917 | 1,950,079 | 12,000 | 4,776,554 | | 6,738,633 |

Item 2 includes $186,066 and $185,640 general fund in fiscal 1990 and fiscal 1991 for personal services. It is the intent of the legislature that the agency's 1993 biennium current level personal services general fund request for this program not exceed $186,066 in fiscal 1992 and $185,640 in fiscal 1993.

In item 3, two firefighter FTE may be added if the current contract for firefighters becomes unnecessary.

Funds may be spent from item 4c only if federal funds are received for this purpose.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| TOTAL SECTION A | 49,183,787 | 182,441,133 | 125,890,204 | 50,935,386 | 408,450,510 | 47,773,648 | 171,835,779 | 106,440,554 | 50,959,326 | 377,009,307 |
| B. HUMAN SERVICES | | | | | | | | | | |
| DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES | | | | | | | | | | |
| 1. Director's Division | 207,818 | 401,440 | | 237,710 | 846,968 | 207,075 | 401,440 | | 240,365 | 848,880 |
| 2. Centralized Services Division | | | | | | | | | | |
| a. Operations | 646,930 | 1,008,288 | 170,106 | 697,912 | 2,523,236 | 625,855 | 763,984 | 170,198 | 683,714 | 2,243,751 |
| b. Audit | | | | 44,274 | 44,274 | | | | | |
| c. Contingency Fund | | 50,000 | | | 50,000 | | | | | |
| 3. Environmental Sciences | | | | | | | | | | |
| a. Operations | 964,336 | 144,780 | 659,375 | | 1,768,491 | 944,467 | 137,517 | 656,811 | | 1,738,795 |
| b. Facility Siting, Variance Reviews, and Environmental Impact Statements | | 100,000 | | | 100,000 | | | | | |
| c. Local Board Inspection Fees | | 237,500 | | | 237,500 | | 237,500 | | | 237,500 |
| 4. Solid and Hazardous Waste Management | 193,478 | 2,084,357 | 7,372,199 | | 9,650,034 | 191,366 | 2,138,552 | 7,448,415 | | 9,778,333 |
| 5. Water Quality | | | | | | | | | | |
| a. Operations | 168,895 | 497,916 | 2,057,665 | | 2,724,476 | 169,950 | 429,834 | 2,059,483 | | 2,659,267 |
| b. Pollution Studies | | | 85,000 | | 85,000 | | | | | |
| 6. Health Services and Medical Facilities Division | 376,652 | 44,565 | 223,608 | | 644,825 | 384,146 | 44,702 | 224,916 | | 653,764 |
| 7. Family/Maternal and Child Health | 50,000 | | 13,900,887 | | 13,950,887 | 50,000 | | 14,731,672 | | 14,781,672 |
| 8. Preventive Health | 291,594 | 52,702 | 1,321,590 | | 1,665,886 | 283,737 | 54,849 | 381,103 | | 1,719,689 |
| 9. Licensing and Certification | 409,844 | | 1,167,210 | | 1,577,054 | 406,711 | | 1,144,305 | | 1,551,016 |
| 10. Health Planning | 189,859 | | | | 189,859 | 190,322 | | | | 190,322 |
| Total | 3,499,406 | 4,621,548 | 26,957,640 | 979,896 | 36,058,490 | 3,453,629 | 4,208,378 | 27,816,903 | 924,079 | 36,402,989 |

Item 8 includes $58,069 of general fund in fiscal 1990 and $50,667 of general fund in fiscal 1991 for implementation of the Montana initiative for the abatement of mortality in infants in HB 773. In addition, the department shall reallocate funds from existing appropriations in HB 100 equal to $46,541 in fiscal 1990 and $46,675 in fiscal 1991 to provide up to $104,610 in fiscal 1990 and up to $97,342 in fiscal 1991 for total funding of the Montana initiative for the abatement of mortality in infants project.

The total appropriation for the department includes $2,101,803 in fiscal 1990 and $2,101,803 in fiscal 1991 from the maternal and child health block grant. To the extent revenues from the grant exceed these amounts, they must be distributed to the counties based upon identifiable needs. To the extent revenues from the grant are less than these amounts, distributions to the counties must be reduced.

Items 2b, 2c, 3b, and 5b are biennial appropriations.

To the extent revenues from the preventive health block grant exceed $597,771 in fiscal 1990 or fiscal 1991, they may be distributed at the discretion of the director of the department of health and environmental sciences based upon identifiable health care needs. To the extent revenues from the grant are less than this amount, the director of the department shall make program reductions.

Item 2a will require an interaccount loan from the general fund for not more than $223,000 for the purpose of purchasing the equipment authorized for the chemistry laboratory. The loan period may not extend beyond June 30, 1991, and must be repaid with laboratory fee revenue.

Item 2c is a contingency appropriation that may be used only if the demand for reimbursable services requires expenditures for supplies, materials, and communications in excess of the appropriated levels of $117,925 for fiscal 1990 and $116,792 for fiscal 1991.

Item 3c provides for distribution to local boards of health of a portion of the license fees collected from food establishments, accommodations, and camping facilities. If this portion of license fees exceeds the amount appropriated in item 3c, the department may request a budget amendment to distribute the excess.

Any savings in the health planning budget (item 10) resulting from any exclusion of hospitals from the certificate of need program must be used to support the Montana initiative for the abatement of mortality in infants (MIAMI) project.

Contingent upon passage of HB 757, there is appropriated $14,967 for fiscal 1990 and $14,967 for fiscal 1991 from the general fund to the department of health and environmental sciences to fund increased responsibilities of agricultural water monitoring.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| DEPARTMENT OF LABOR AND INDUSTRY | | | | | | | | | | |
| 1. Employment Services Division | | | | | | | | | | |
| a. Job Services | 85,000 | | 10,978,404 | | 11,063,404 | | 85,000 | 10,845,229 | | 10,930,229 |
| b. Unemployment Insurance | | | 3,241,304 | | 3,241,304 | | | 3,211,745 | | 3,211,745 |
| c. Centralized Services | | | | 2,601,905 | 2,601,905 | | | | 2,641,405 | 2,641,405 |
| d. Audit | | | | 58,376 | 58,376 | | | | | |
| e. Job Training Partnership Act | | | 9,748,465 | | 9,748,465 | 194,307 | | 12,335,069 | | 12,529,376 |
| f. Employment Relations | 237,708 | | 1,870,247 | 3,500 | 2,111,455 | | 237,950 | 1,884,678 | 3,500 | 2,126,128 |
| g. Employment Policy | | | 2,653,450 | | 2,653,450 | | | 2,783,725 | | 2,783,725 |
| h. Human Rights | 251,284 | | 147,669 | | 398,953 | 239,374 | | 102,700 | | 342,074 |
| Total | 251,284 | 322,708 | 28,639,539 | 2,663,781 | 31,877,312 | 433,681 | 322,950 | 31,163,146 | 2,644,905 | 34,564,682 |
| 2. Workers' Compensation | | | | | | | | | | |
| a. Administration | | 2,508,327 | 24,988 | | 2,533,315 | | 2,272,019 | 24,988 | | 2,297,007 |
| b. Audit | | 41,242 | | | 41,242 | | | | | |
| c. State Insurance Fund | | 4,929,859 | | | 4,929,859 | | 4,798,994 | | | 4,798,994 |
| d. Insurance Compliance | 541,791 | 1,267,364 | | | 1,809,155 | 524,346 | 1,253,491 | | | 1,777,837 |
| e. Safety | | 873,635 | 101,357 | | 974,992 | | 843,161 | 101,645 | | 944,806 |
| Total | 541,791 | 9,620,427 | 126,345 | | 10,288,563 | 524,346 | 9,167,665 | 126,633 | | 9,818,644 |

In accordance with the provisions of 29 U.S.C. 1531 and 42 U.S.C. 683, the governor shall assure that programs administered under the Job Training Partnership Act are coordinated with any other relevant employment, training, education, or work program in the state, including the job opportunities and basic skills training (JOBS) program and the job search, training, and workfare programs established in 53-3-304.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES | | | | | | | | | | |
| 1. Assistance Payments | | | | | | | | | | |
| a. Operations | 1,796,815 | | 6,066,595 | | 7,863,410 | 1,851,641 | | 6,523,826 | | 8,375,467 |
| b. Benefits | | | | | | | | | | |
| i. Legal Services | 100,000 | | | | 100,000 | 100,000 | | | | 100,000 |
| ii. State General Assistance and Transition to Work | 4,765,200 | | 500,000 | | 5,265,200 | 5,024,600 | | | | 5,024,600 |
| iii. Nonresident General Relief | 33,000 | | | | 33,000 | 33,000 | | | | 33,000 |
| iv. Aid to Families With Dependent Children | 9,679,814 | 671,411 | 25,553,130 | | 35,904,355 | 10,031,901 | 650,939 | 26,513,678 | | 37,196,518 |
| v. Welfare Reform | 64,955 | | 573,073 | | 638,028 | 843,269 | | 4,282,703 | | 5,125,972 |
| vi. Other Benefits | 358,311 | | 13,072,621 | | 13,430,932 | 366,447 | | 12,993,884 | | 13,360,331 |
| Total | 16,798,095 | 671,411 | 45,765,419 | | 63,234,925 | 18,250,858 | 650,939 | 50,314,091 | | 69,215,888 |
| 2. Eligibility Determination | 2,464,822 | 2,300,142 | 4,398,438 | | 9,163,402 | 2,484,168 | 2,304,059 | 4,419,917 | | 9,208,144 |
| 3. Administration and Support | | | | | | | | | | |
| a. Operations | 971,035 | 256,833 | 1,681,142 | | 2,909,010 | 982,608 | 259,931 | 1,698,613 | | 2,941,152 |
| b. Legislative Audit | 64,616 | 1,262 | 65,562 | | 131,440 | | | | | |
| c. Child Support Enforcement Bureau | | | 2,443,161 | 1,155,846 | 3,599,007 | | | 2,831,288 | 1,260,677 | 4,091,965 |
| Total | | | | | | | | | | |

| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| | 1,035,651 | 258,095 | 4,189,865 | 1,155,846 | 6,639,457 | 982,608 | 259,931 | 4,529,901 | 1,260,677 | 7,033,117 |
| 4. County Administration | | | | | | | | | | |
| | 661,706 | | 439,477 | | 1,101,183 | 702,130 | | 437,551 | | 1,139,681 |
| 5. Medical Assistance | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 1,128,854 | | 2,085,159 | | 3,214,013 | 1,108,517 | | 2,033,467 | | 3,141,984 |
| b. Benefits | | | | | | | | | | |
| i. State Medical | | | | | | | | | | |
| | 4,500,000 | | | | 4,500,000 | 4,500,000 | | | | 4,500,000 |
| ii. Medicaid - Waiver, Elderly | | | | | | | | | | |
| | 821,202 | | 1,930,459 | | 2,751,661 | 781,007 | | 1,938,414 | | 2,719,421 |
| iii. Medicaid - Waiver, Disabled | | | | | | | | | | |
| | 630,203 | | 1,479,692 | | 2,109,895 | 598,681 | | 1,485,882 | | 2,084,563 |
| iv. Medicaid - Institutions | | | | | | | | | | |
| | | | 9,862,402 | | 9,862,402 | | | 9,877,645 | | 9,877,645 |
| v. Medicaid - Nursing Homes | | | | | | | | | | |
| | 14,644,487 | | 36,151,513 | | 50,796,000 | 14,588,611 | | 36,207,389 | | 50,796,000 |
| vi. Medicaid - Primary Care | | | | | | | | | | |
| | 18,517,217 | 6,907,000 | 62,762,449 | | 88,186,666 | 19,356,097 | 7,030,000 | 65,487,499 | | 91,873,596 |
| vii. Catastrophic Coverage Act | | | | | | | | | | |
| | 2,256,407 | | 3,006,746 | | 5,263,153 | 3,981,772 | | 7,630,321 | | 11,612,093 |
| viii. OBRA | | | | | | | | | | |
| | 869,102 | | 2,609,903 | | 3,479,005 | 830,784 | | 2,457,418 | | 3,288,202 |
| ix. Medicaid - Nursing Homes - Nurse Aide Salary Increase | | | | | | | | | | |
| | 112,497 | | 277,712 | | 390,209 | 230,860 | | 572,970 | | 803,830 |
| x. Medicaid Funds for Implementation of House Bill 304 | | | | | | | | | | |
| | | | 1,500,000 | | 1,500,000 | | | 1,500,000 | | 1,500,000 |
| xi. Medical Provider Increase | | | | | | | | | | |
| | 624,763 | | 1,517,368 | | 2,142,131 | 1,324,615 | | 3,219,543 | | 4,544,158 |
| xii. Nursing Home Provider Increase | | | | | | | | | | |
| | 439,334 | | 1,084,546 | | 1,523,880 | 888,446 | | 2,205,030 | | 3,093,476 |
| xiii. Waiver Expansion Personal Services | | | | | | | | | | |
| | 12,767 | | 12,768 | | 25,535 | 12,766 | | 12,768 | | 25,534 |
| xiv. Other Benefits | | | | | | | | | | |
| | 1,055,579 | | 4,602,922 | | 5,658,501 | 1,093,613 | | 4,884,514 | | 5,978,127 |
| Total | | | | | | | | | | |
| | 45,612,412 | 6,907,000 | 128,883,639 | | 181,403,051 | 49,295,769 | 7,030,000 | 139,512,860 | | 195,838,629 |
| 6. Audit and Program Compliance | | | | | | | | | | |
| | 625,447 | | 766,432 | | 1,391,879 | 620,987 | | 760,654 | | 1,381,641 |
| 7. Vocational Rehabilitation | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 124,455 | 390,432 | 1,971,496 | | 2,486,383 | 123,979 | 388,083 | 1,968,971 | | 2,481,033 |
| b. Vocational Rehabilitation Provider Increase | | | | | | | | | | |
| | 13,186 | 7,308 | 79,958 | | 100,452 | 28,288 | 12,904 | 163,074 | | 204,266 |
| c. Benefits | | | | | | | | | | |
| | 755,660 | 365,400 | 4,515,148 | | 5,636,208 | 789,973 | 321,000 | 4,578,268 | | 5,689,241 |
| Total | | | | | | | | | | |
| | 893,301 | 763,140 | 6,566,602 | | 8,223,043 | 942,240 | 721,987 | 6,710,313 | | 8,374,540 |
| 8. Disability Determination | | | | | | | | | | |
| | | | 2,670,435 | | 2,670,435 | | | 2,605,243 | | 2,605,243 |
| 9. Visual Services | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 115,816 | | 465,558 | | 581,374 | 115,849 | | 465,484 | | 581,333 |
| b. Visual Services Provider Increase | | | | | | | | | | |
| | 1,072 | | 7,414 | | 8,486 | 2,146 | | 14,826 | | 16,972 |
| c. Benefits | | | | | | | | | | |
| | 153,749 | | 470,483 | | 624,232 | 153,749 | | 470,483 | | 624,232 |
| Total | | | | | | | | | | |
| | 270,637 | | 943,455 | | 1,214,092 | 271,744 | | 950,793 | | 1,222,537 |
| 10. Developmental Disabilities | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 311,007 | | 929,847 | | 1,240,854 | 294,688 | | 925,446 | | 1,220,134 |
| b. Respite Care | | | | | | | | | | |
| | 48,209 | | | | 48,209 | 48,209 | | | | 48,209 |
| c. Farm in Dell | | | | | | | | | | |
| | 126,400 | | | | 126,400 | 128,928 | | | | 128,928 |
| d. Benefits | | | | | | | | | | |
| | 7,576,649 | | 13,282,585 | | 20,859,234 | 8,593,493 | | 14,418,873 | | 23,012,366 |

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| | Fiscal 1990 | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| Total | | | | | | | | | |
| 8,062,265 | | 14,212,432 | | 22,274,697 | 9,065,318 | | 15,344,319 | | 24,409,637 |
| 11. DDPAC | | | | | | | | | |
| a. Operations | | | | | | | | | |
| | | 105,000 | | 105,000 | | | 105,000 | | 105,000 |
| b. Benefits | | | | | | | | | |
| | | 195,000 | | 195,000 | | | 195,000 | | 195,000 |
| Total | | | | | | | | | |
| | | 300,000 | | 300,000 | | | 300,000 | | 300,000 |
| TOTAL SRS | | | | | | | | | |
| 76,424,336 | 10,899,788 | 209,136,194 | 1,155,846 | 297,616,164 | 82,615,822 | 10,966,916 | 225,885,642 | 1,260,677 | 320,729,057 |

In each fiscal year, 10% of the low-income energy assistance program block grant must be transferred to the social services block grant. If the transfer is greater than $862,444 in either fiscal year, a like amount of general fund must revert. Ten percent of the low-income energy assistance program block grant must be used for the weatherization program in each fiscal year. If the department receives refunds from low-income energy assistance grants in excess of $420,000 in either fiscal year, the excess amount of refunds must be used in the weatherization program.

It is the intent of the legislature that the department establish AFDC and general assistance payment levels at 42% of the federal poverty index each year of the 1991 biennium using the calendar year 1989 federal poverty index to establish the state fiscal 1990 payment levels and the calendar year 1990 federal poverty index to establish the state fiscal 1991 payment levels.

Except for 5% in fiscal 1990 and 5% in fiscal 1991 that the department may use for administrative expenses, all other funds appropriated for the community services block grant must be allocated to the human resource development councils.

Funds appropriated under item 1bi are for a contract with the Montana legal services corporation to provide legal assistance to all general relief clients seeking eligibility for the federal supplemental security income program and to those current recipients of supplemental security income who have been notified of termination of benefits. The appropriation is intended to reduce the general assistance case load by a minimum of 320 clients by the end of the 1991 biennium.

The department is directed to work with the Montana public and investor-owned utilities and the HRDCs to prepare a long-range, low-income weatherization plan based upon utility funding for presentation to the 52nd legislature. Utility funded weatherization must be cost-effective for the utilities (i.e., the energy saved through the weatherization must be less costly than the value of the electricity or natural gas that would be needed without the weatherization savings).

The department may not consider donated or nondepartmental contracted funds obtained by developmental disabilities providers when allocating or contracting state payments for developmental disabilities services.

Item 3b is a biennial appropriation.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |

Transfer of funds may be made among items 5bi, 5bv, and 5bvi. No funds may be transferred from these items to any other portion of the SRS budget.

Funds appropriated in item 1bii for fiscal 1990 include at least $100,000 of general fund and $500,000 of federal funds for the transition to work program. If a general assistance recipient accepts funding from the transition to work program in order to accept employment in another state, the recipient is not eligible for the general assistance program for 16 months after his relocation to another state. No funds may be transferred out of item 1bii to any other portion of the SRS budget.

Transfer of funds may be made among items 1bv, 5bvii, and 5bviii. No funds may be transferred from these items to any other portion of the SRS budget.

Funds appropriated under item 5bix may only be used for salary increases for nurse aides who have completed all training and competency evaluation requirements mandated under the federal Omnibus Budget Reconciliation Act. These funds may not be distributed by the department as part of the reimbursement formula for routine operating and property costs.

It is the intent of the legislature that a portion of funds appropriated under items 1bv and 5bvii may be used for eligibility determination of additional welfare cases that are directly attributable to changes in federal eligibility criteria. Eligibility determination of the additional cases and general relief case loads may include contracting for services in nontraditional settings. The department shall report to the 52nd legislature on the efficiency and cost-effectiveness of such an approach to eligibility determination.

The department may not expend or reduce the amount, scope, or duration of the benefits available to recipients under the medicaid-other program during the 1991 biennium unless Title XIX of the federal Social Security Act is amended to require expansion or reduction of benefits as a condition of the state receiving federal financial participation.

No funds may be transferred out of item 5biv.

If collections of county mill levy funds from state-assumed counties exceed $6,907,000 in fiscal 1990 and $7,030,000 in fiscal 1991, excepting mill levy funds received from any county becoming state assumed after fiscal 1989, there must be a general fund reversion of an amount equal to the excess mill levy revenue.

Funds appropriated under item 11b must be expended for direct services in accordance with recommendations of the developmental disabilities planning and advisory council.

The department may request additional federal authority for work training programs through the budget amendment process. The department may contract with the department of labor to administer such programs.

Of the total funds received by the vocational rehabilitation program from the industrial accident and rehabilitation account, $300,000 per year is to be used to fund counseling and placement costs in the vocational rehabilitation program. No indirect costs may be paid with industrial accident and rehabilitation account funds.

Item 10d includes $1,245,487 appropriated for fiscal 1990 and $1,270,398 for fiscal 1991 for direct care salary increases within the developmental disabilities community-based system. These funds will be used to bring salaries toward a target minimum entry level for each job classification. Salaries farthest below the minimum entry level will be addressed first.

The developmental disabilities division shall present to the 52nd legislature the cost of full compliance with the requirements for early intervention services that are contained in Part H of the federal Education of the Handicapped Act, as amended by Public Law 99-457.

Item 3c is an appropriation for the state child support enforcement bureau. The department shall establish an enterprise fund on July 1, 1989, to allow for operation of the child support enforcement program. It is the intent of the legislature that the program collect $1.25 in fiscal 1990 and $1.69 in fiscal 1991 for each $1.00 expended from the enterprise fund. The department is authorized to employ a maximum of 106 FTE in fiscal 1990 and 121 FTE in fiscal 1991, provided the department meets the legislative performance criteria. The purpose of the additional staff is to meet the requirements of the federal audit performance standards, the 1987 audit corrective action plan, the federal welfare reform act, and SB 22, SB 42, SB 129, and SB 177 passed by the 51st legislature. The department may contract portions of this program as long as it meets legislative performance criteria.

The state share of the AFDC-related support collections and all AFDC and non-AFDC federal incentive payments must be deposited to this enterprise fund from which the state's share of the administrative and operational costs of the program must be paid. Any fund balance in excess of $500,000 in the enterprise account at the end of each fiscal year must be returned to the general fund. The department shall clearly identify all related revenues and expenditures on the state budgeting and accounting system in order for the office of budget and program planning or the office of the legislative fiscal analyst to completely evaluate the cost-effectiveness of this program.

The funds appropriated for the state child support enforcement bureau in item 3c must be transferred to the department of revenue unless the 51st legislature provides substantive authority transferring the program of child support enforcement to the department of social and rehabilitation services.

The department may pursue funding for the specialized services and support organization (SSSO) under the federal ICF/MR program if the federal government fails to approve medicaid waiver funding for SSSO services.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| DEPARTMENT OF FAMILY SERVICES | | | | | | | | | | |
| 1. Management Support | | | | | | | | | | |
| a. Operations | 1,412,780 | 45,000 | 504,808 | | 1,962,588 | 1,407,840 | 45,000 | 498,742 | | 1,951,582 |
| b. Legislative Audit | 33,987 | | 21,356 | | 55,343 | | | | | |
| Total | 1,446,767 | 45,000 | 526,164 | | 2,017,931 | 1,407,840 | 45,000 | 498,742 | | 1,951,582 |
| 2. Community Services | | | | | | | | | | |
| a. Operations | 6,550,289 | 889,519 | 2,133,567 | | 9,573,375 | 6,588,060 | 889,520 | 2,043,040 | | 9,520,620 |
| b. Benefits | 2,486,977 | 131,434 | 4,829,374 | | 7,447,785 | 2,525,822 | 96,420 | 4,776,862 | | 7,399,104 |
| c. Foster Care | 6,582,657 | 1,139,650 | 2,580,266 | | 10,302,573 | 7,697,077 | 1,139,650 | 2,520,639 | | 11,357,366 |
| d. SSI Payments - Farm in Dell and SSSO | 9,024 | | | | 9,024 | 48,128 | | | | 48,128 |
| Total | 15,628,947 | 2,160,603 | 9,543,207 | | 27,332,757 | 16,859,087 | 2,125,590 | 9,340,541 | | 28,325,218 |
| 3. Mountain View School | | | | | | | | | | |
| a. Operations | 1,803,229 | 3,213 | 86,486 | | 1,892,928 | 1,822,874 | 3,213 | 86,501 | | 1,912,588 |
| b. Teacher Annual Leave and Holidays | 13,356 | | | | 13,356 | 13,356 | | | | 13,356 |
| 4. Pine Hills School | | | | | | | | | | |
| a. Operations | 2,963,739 | 317,221 | 269,727 | | 3,550,687 | 2,979,948 | 323,246 | 270,173 | | 3,573,367 |
| b. Teacher Annual Leave and Holidays | 25,200 | | | | 25,200 | 25,200 | | | | 25,200 |
| Total | 21,881,238 | 2,526,037 | 10,425,584 | | 34,832,859 | 23,108,305 | 2,497,049 | 10,195,957 | | 35,801,311 |

Item 1b is a biennial appropriation.

The department shall develop a plan for the implementation of a continuum of youth services for the state of Montana to be presented to the 52nd legislature.

The plan for implementation should address the following goals and objectives:

(1) stabilize the rate system for existing child care providers by phasing in a percentage increase of the state's rates with a goal toward adequate funding to ensure continued provision of existing services;

(2) quantify the number of children served and the number of children unserved or underserved;

(3) complete the continuum of care necessary to address the needs of children in the custody of the department by developing or enhancing programs in the following areas:

(a) prevention of child abuse and neglect and juvenile delinquency;

(b) family-based and in-home services for families in crisis;

(c) intermediate level services, including specialized or therapeutic foster care and group care;

(d) development of services to address the needs of the children in the following categories:

(i) juvenile sex offenders;

(ii) dually diagnosed (developmentally disabled and emotionally disturbed) children;

(iii) juvenile delinquents in need of community juvenile corrections programs;

(iv) chronically mentally ill children;

(v) severely emotionally disturbed children.

It is recognized that the planning process for the development of the youth services system must be tied to the local level. The establishment of the 10 local youth services advisory councils across the state provides the best mechanism for local participation in the planning process. All planning to address the needs of youth should be undertaken in conjunction with these local councils.

Item 2a contains $49,584 of general fund and $1,987 of federal funds in fiscal 1990 and $66,113 of general fund and $2,650 of federal funds in fiscal 1991 for 2.5 FTE day-care licensing personnel. If additional federal funds become available for this program on or before October 1, 1989, they must replace general fund to the fullest extent possible.

The appropriation in items 3b and 4b may only be used to pay annual leave and holiday pay for teachers at Mountain View school and Pine Hills school.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | |
|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| TOTAL SECTION B | | | | | | | | | |
| 102,598,055 | 27,990,508 | 275,285,302 | 4,799,523 | 410,673,388 | 110,135,783 | 27,162,958 | 295,188,281 | 4,829,661 | 437,316,683 |
| | | | | C. NATURAL RESOURCES | | | | | |
| PUBLIC SERVICE COMMISSION | | | | | | | | | |
| 1. Operations | | | | | | | | | |
| 1,754,543 | | 25,802 | 20,000 | 1,800,345 | 1,728,864 | | 24,302 | 20,000 | 1,773,166 |
| 2. Audit | | | | | | | | | |
| 13,836 | | | | 13,836 | | | | | |
| 3. Consultants | | | | | | | | | |
| 50,000 | | | | 50,000 | | | | | |
| Total | | | | | | | | | |
| 1,818,379 | | 25,802 | 20,000 | 1,864,181 | 1,728,864 | | 24,302 | 20,000 | 1,773,166 |
| Item 3 is a line item biennial appropriation. | | | | | | | | | |
| DEPARTMENT OF LIVESTOCK | | | | | | | | | |
| 1. Central Services | | | | | | | | | |
| a. Operations | | | | | | | | | |
| 78,316 | 333,878 | 16,610 | | 428,804 | 80,352 | 342,559 | 16,621 | | 439,532 |
| b. Audit | | | | | | | | | |
| 3,418 | 14,569 | | | 17,987 | | | | | |
| 2. Diagnostic Laboratory | | | | | | | | | |
| 305,493 | 443,270 | | | 748,763 | 305,791 | 449,759 | | | 755,550 |
| 3. Disease Control | | | | | | | | | |
| | 492,336 | | | 492,336 | | 501,343 | | | 501,343 |
| 4. Milk and Egg Program | | | | | | | | | |
| 188,428 | | 30,000 | | 218,428 | 179,844 | | 30,000 | | 209,844 |
| 5. Inspection and Control | | | | | | | | | |
| | 1,940,205 | | | 1,940,205 | | 2,049,681 | | | 2,049,681 |
| 6. Predatory Animal Control | | | | | | | | | |
| | 269,200 | | | 269,200 | | 271,033 | | | 271,033 |
| 7. Rabies Control | | | | | | | | | |
| 41,912 | 15,000 | | | 56,912 | 41,930 | 15,000 | | | 56,930 |
| 8. Meat Inspection | | | | | | | | | |
| a. Current Level | | | | | | | | | |
| 128,888 | | 128,888 | | 257,776 | 128,888 | | 128,888 | | 257,776 |
| b. Program Expansion | | | | | | | | | |
| 87,898 | | 87,898 | | 175,796 | 87,898 | | 87,898 | | 175,796 |
| Total | | | | | | | | | |
| 834,353 | 3,508,458 | 263,396 | | 4,606,207 | 824,703 | 3,629,375 | 263,407 | | 4,717,485 |

Item 2 contains $15,000 for the purchase of a microhematocrit centrifuge in fiscal 1990 and $21,000 for the purchase of a coulter counter in fiscal 1991. Both of these items are to be excluded from the 1993 biennial budget base.

If there is a brucellosis outbreak, the outbreak is an emergency for budget amendment purposes under 17-7-401 through 17-7-405.

If the department does not have sufficient resources to perform the 10-year brand rerecord as required by 81-3-104, the lack of resources is an emergency for budget amendment purposes under 17-7-401 through 17-7-405.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | | | | | | | | | |
| 1. Centralized Services | | | | | | | | | |
| a. Operations | | | | | | | | | |
| 162,254 | 172,685 | 17,502 | 31,729 | 384,170 | 166,494 | 174,639 | 17,578 | 32,282 | 390,993 |
| b. Audit | | | | | | | | | |
| 23,521 | | | | 23,521 | | | | | |
| 2. Environmental Management | | | | | | | | | |
| a. Operations | | | | | | | | | |
| 654,283 | 189,267 | 223,841 | | 1,067,391 | 675,987 | 187,778 | 245,398 | | 1,109,163 |
| b. Equipment Expansion | | | | | | | | | |
| 84,092 | | | | 84,092 | 51,500 | | | | 51,500 |
| 3. Plant Industry | | | | | | | | | |
| 441,603 | 499,028 | 9,157 | 10,058 | 959,846 | 429,557 | 511,177 | 8,904 | 10,561 | 960,199 |
| 4. Agriculture Development Division | | | | | | | | | |
| 213,099 | 3,321,977 | 70,000 | 240,966 | 3,846,042 | 208,425 | 3,275,982 | 70,000 | 240,758 | 3,795,165 |
| Total | | | | | | | | | |
| 1,578,852 | 4,182,957 | 320,500 | 282,753 | 6,365,062 | 1,531,963 | 4,149,576 | 341,880 | 283,601 | 6,307,020 |

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| | Fiscal 1990 | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|
| General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |

Included in item 2 is appropriations authority of $24,542 in fiscal 1990 and $24,593 in fiscal 1991 for the operations of the rodent advisor committee. The committee may only use revenues earned from the rodenticide tax established under 80-7-1106, gifts, or grants to expend the appropriations authority.

Included in item 3 is $29,459 in fiscal 1990 and $27,299 in fiscal 1991 for travel. Of the amounts appropriated for travel, $4,700 in fiscal 1990 and $2,400 in fiscal 1991 are increases over the amounts expended in fiscal 1988. If the division expends more than $24,759 in fiscal 1990 for travel, the amount expended over $24,759 must be excluded from the budgets presented to the 52nd legislature.

Included in item 3 are 11.0 FTE and $357,338 in fiscal 1990 and $362,491 in fiscal 1991 for the operations of the department's grain laboratory. If the workload at the grain laboratory requires additional resources beyond the amounts appropriated, the workload increase is an emergency for budget amendment purposes under 17-7-401 through 17-7-405.

The department shall implement rules to charge and collect fees for agriculture counseling and mediation program financial assistance and mediation activities. To the extent that fee revenues are available, the department shall expend the fee revenues prior to expending the general fund. If there is a fee fund balance at the conclusion of the program, the fund balance must be transferred to the general fund.

The department is authorized to make grants to state agencies from the growth through agriculture account as approved by the Montana agriculture development council in accordance with Title 90, chapter 9. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount.

Within proprietary funds appropriated to the department are revenues received under the provisions of 80-2-221 for hail insurance and 80-2-103 for rural development. Amounts included are:

| | | Fiscal 1990 | Fiscal 1991 |
|---|---|---|---|
| Section 80-2-221, MCA | Item 1a | $ 24,224 | $ 24,652 |
| | Item 4 | 162,954 | 163,654 |
| Section 80-2-103, MCA | Item 1a | 7,505 | 7,630 |
| | Item 4 | 78,012 | 77,104 |

| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| DEPARTMENT OF STATE LANDS | | | | | | | | | | |
| 1. Central Management | | | | | | | | | | |
| a. Operations | 1,320,911 | 171,500 | 121,526 | 182,775 | 1,796,712 | 1,324,979 | 171,500 | 121,526 | 182,948 | 1,800,953 |
| b. Audit | 35,973 | | | | 35,973 | | | | | |
| 2. Reclamation | | | | | | | | | | |
| a. Operations | 303,050 | 1,103,869 | 8,730,722 | | 10,137,641 | 298,573 | 1,103,447 | 8,579,675 | | 9,981,695 |
| b. Hard-Rock Reclamation | | 100,000 | | | 100,000 | | | | | |
| c. Bond Forfeitures | | 100,000 | | | 100,000 | | | | | |
| 3. Land Administration | | | | | | | | | | |
| a. Operations | 688,472 | | | | 688,472 | 651,326 | | | | 651,326 |
| b. Weed Control | 20,000 | | | | 20,000 | 20,000 | | | | 20,000 |
| 4. Resource Development | | 284,488 | | | 284,488 | | 282,673 | | | 282,673 |
| 5. Forestry | | | | | | | | | | |
| a. Operations | 5,606,971 | 2,976,969 | 524,768 | | 9,108,708 | 5,469,883 | 2,943,668 | 511,348 | | 8,924,899 |
| b. Federal Fire Reimbursement | | | 100,000 | | 100,000 | | | 100,000 | | 100,000 |
| c. Audits — Timber Sales | 10,000 | | | | 10,000 | | | | | |
| Total | 7,985,377 | 4,736,826 | 9,477,016 | 182,775 | 22,381,994 | 7,764,761 | 4,501,288 | 9,312,549 | 182,948 | 21,761,546 |

| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |

Items 2b, 2c, and 5c are biennial appropriations.

Item 5a contains $3,878,581 in fiscal 1990 and $3,766,210 in fiscal 1991 for prefire suppression costs.

Item 1 contains $11,000 per year for the travel expenses of the oil and gas auditor. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the oil and gas auditor's travel expenses in the current level base.

Item 2a contains $2,000 per year for printing of the hard-rock bureau's administrative rules, $2,050 per year for inspection supplies, and $7,500 in fiscal 1990 for printing of the coal and uranium bureau's administrative rules. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from the above items in the current level base.

Item 5a contains $15,000 in fiscal 1990 for completion of the fire protection assessment computer system, $11,838 in fiscal 1990 for one-time computer supplies, and $14,400 per year for the lease/purchase of a photocopier. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include these expenditures in the current level base.

Item 5b contains $100,000 per year of federal fire reimbursement funds that the department may expend on department forestry activities. Federal fire reimbursement funds are those funds received from the federal agencies for expenses incurred from loaning department personnel to federal agencies to assist in fire suppression activities. Only those federal funds received by the state as reimbursement of expenses credited against the department's state forestry operational budget are considered federal fire reimbursement funds. All other federal funds received must be deposited into the general fund. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from current level operations.

Item 5a contains $43,007 in fiscal 1990 and $27,505 in fiscal 1991 for a federally/privately funded prescribed burn program. The department is to implement the program only if a federal or private funding source is obtained.

Item 5a contains $106,301 in fiscal 1990 and $73,360 in fiscal 1991 for expansion of the slash program. The expansion funds may be expended only if HB 657 is enacted.

The department and each recognized federal fire protection agency shall, in advance of the fire season, prepare annual operation plans concerning fire prevention, training, communications, detection, suppression, and prescribed fire for all areas, including special management areas, that are of concern to both agencies. It is the intent of the legislature that one of the department's purposes in negotiating these plans is to promote clarity among federal and state firefighting units regarding policies for management of fires in special management areas and to thereby prevent unnecessary expenditure of the state general fund.

Item 5c is to coordinate and conduct, in consultation with the environmental quality council, audits of the application and effectiveness of voluntary best management practices for timber sales.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1. Centralized Services | | | | | | | | | |
| a. Operations | 1,777,622 | 393,440 | 1,726,789 | 3,897,851 | | 1,344,885 | 379,593 | 1,769,636 | 3,494,114 |
| b. Audit | 47,042 | | | 47,042 | | | | | |
| c. Legislative Contract Authority | | 50,000 | | 50,000 | | | 50,000 | | 50,000 |
| d. New Helicopter Insurance and Maintenance | | | 76,982 | 76,982 | | | | 76,982 | 76,982 |
| 2. Field Services Division | 2,465,216 | 242,125 | 118,707 | 2,826,048 | | 2,543,074 | 239,149 | 100,423 | 2,882,646 |
| 3. Fisheries | | | | | | | | | |
| a. Operations | 3,098,674 | 1,722,127 | | 4,820,801 | | 3,049,096 | 1,660,092 | | 4,709,188 |
| b. Trucks | 18,375 | 55,125 | | 73,500 | | 23,375 | 70,125 | | 93,500 |
| c. Legislative Contract Authority | | 1,000,000 | | 1,000,000 | | | 1,000,000 | | 1,000,000 |
| d. Little Missouri River Water Reservations | 13,574 | 40,721 | | 54,295 | | | | | |
| e. Yellow Bay Biological Station | 25,000 | | | 25,000 | | 25,000 | | | 25,000 |
| 4. Law Enforcement | | | | | | | | | |
| a. Operations | 3,935,127 | 182,397 | | 4,117,524 | | 3,995,116 | 191,507 | | 4,186,623 |
| b. Legislative Contract Authority | | 7,500 | | 7,500 | | | 7,500 | | 7,500 |
| 5. Wildlife | | | | | | | | | |
| a. Operations | 2,613,364 | 2,265,809 | | 4,879,173 | | 2,658,930 | 2,305,721 | | 4,964,651 |
| b. Legislative Contract Authority | | | | | | | | | |

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| | | | 1,165,000 | | 1,165,000 | | | 1,165,000 | | 1,165,000 |
| c. Pheasant Enhancement Program | | | | | | | | | | |
| | | 1,849,000 | | | 1,849,000 | | | | | |
| 6. Parks Program | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | | 3,396,490 | 210,578 | 361,131 | 3,968,199 | | 3,497,554 | 334,836 | 352,518 | 4,184,908 |
| b. Land and Water Conservation Program | | | | | | | | | | |
| | | | 700,000 | | 700,000 | | | | | |
| 7. Conservation Education | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | | 1,177,690 | 141,527 | | 1,319,217 | | 1,195,570 | 143,718 | | 1,339,288 |
| b. Shooting Ranges | | | | | | | | | | |
| | | 9,437 | 140,563 | | 150,000 | | | | | |
| 8. Administration | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | | 1,418,521 | 356,004 | | 1,774,525 | | 1,450,269 | 369,354 | | 1,819,623 |
| b. Saline Seep | | | | | | | | | | |
| | | 150,000 | | | 150,000 | | | | | |
| c. Legislative Contract Authority | | | | | | | | | | |
| | | | 90,000 | | 90,000 | | | 90,000 | | 90,000 |
| d. Cherry Creek Dam | | | | | | | | | | |
| | | 100,000 | 200,000 | | 300,000 | | | | | |
| Total | | | | | | | | | | |
| | | 22,095,132 | 8,962,916 | 2,283,609 | 33,341,657 | | 19,782,869 | 8,006,595 | 2,299,559 | 30,089,023 |

Items 3d, 5c, 6b, 7b, 8b, and 8d are biennial appropriations.

Item 1d may not be expended unless the department purchases a replacement helicopter.

Item 2 contains $167,831 in fiscal 1990 and $167,951 in fiscal 1991 for expanding the block management program, $37,159 in fiscal 1990 and $37,194 in fiscal 1991 to expand the fishing and motorboat access program, and $23,676 in fiscal 1990 and $23,706 in fiscal 1991 for a microcomputer support position. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include expenditures from the above items in the current level base.

Item 3b contains $73,500 in fiscal 1990 and $93,500 in fiscal 1991 to replace two hatchery trucks. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from the above items in the current level base.

Item 3a contains $4' 900 per year for the department to employ consultants to represen.. the department in reviews of Natural Streambed and Land Preservation Act projects, irrigation diversions, and U.S. forest service projects. It is the intent of the legislature that the department coordinate the employment of consultants with the local conservation districts and other appropriate parties to the extent possible. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

If the department receives additional federal funds for the costs of the fisheries division, it may increase its federal appropriation and decrease its state special appropriation by like amounts.

Item 3a contains $41,960 in fiscal 1990 and $52,010 in fiscal 1991 for a cooperative program with the U.S. forest service to collect fisheries data on national forest lands; $21,674 in fiscal 1990 and $21,694 in fiscal 1991 for experimental stocking of Kokanee on Flathead Lake; and $35,895 in fiscal 1990 and $35,965 in fiscal 1991 to expand the department's administration of fishing access sites. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from the above items in the current level base. The department may only expend the state funds for the cooperative program with the U.S. forest service if the matching federal funds are available.

The department shall report to the 52nd legislature the results of the fish population evaluation and monitoring program expansion.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |

Item 3e is appropriated for fisheries research as specified by the department through a contracted agreement with the Yellow Bay experiment station.

Item 4a contains $50,373 per year for employee relocation costs, which is an increase of $27,000 per year over the amount expended in fiscal 1988. In preparing the 1993 biennial budget for legislative consideration, the maximum amount of expenditures from the relocation expenditure code to be included by the office of budget and program planning and the legislative fiscal analyst's office in the current level bases is $23,373.

Item 4a contains $40,000 per year of increased funds that the department may use only if it is successful in negotiating a compensatory time proposal with the wardens' union. A compensatory time proposal would allow the department the flexibility of working wardens more than a 40-hour week and compensating the wardens with 1 ½ hours compensatory time for every hour worked over 40 hours, rather than the current policy of having to pay time and a half for hours worked over 40 hours.

Item 5a contains $363,600 per year for rental of private aircraft, which is an increase of $90,600 per year over the amount expended in fiscal 1988. In preparing the 1993 biennial budget for legislative consideration, the maximum amount of expenditures from the private aircraft rental expenditure code to be included by the office of budget and program planning and the legislative fiscal analyst's office in the current level bases is $273,000.

Item 5a contains $16,391 in fiscal 1990 and $16,436 in fiscal 1991 for a habitat/timber sales planning program expansion and $28,090 in fiscal 1990 and $29,025 in fiscal 1991 for a nongame program expansion. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from the above items in the current level base.

The department shall present to the 52nd legislature funding alternatives for the continuation of the nongame program that will replace the use of hunting and fishing license funds to support the program.

The department shall report to the 52nd legislature all projects and programs that terminated during the 1991 biennium.

Item 6a contains $225,881 in fiscal 1990 and $393,743 in fiscal 1991 for the Montana conservation corps. The expenditure of the appropriations for the corps is contingent upon the enactment of SB 388.

Contained in item 6a state special revenue appropriations for both fiscal 1990 and fiscal 1991 is a minimum of $275,500 for the operations and maintenance of the Canyon Ferry recreation area. The department shall report to the office of budget and program planning and the legislative finance committee on September 1, 1990, the income earned in fiscal 1990 from the Canyon Ferry recreation area and the fiscal 1990 state and federal expenditure made to operate and maintain the Canyon Ferry recreation area. The department shall also make a similar report on December 1, 1990, for the first 5 months' income and expenditures of fiscal 1991 at the Canyon Ferry recreation area.

The appropriation for item 7b may only be expended to assist in the development of shooting ranges.

Item 8a contains $30,000 per year for legal fees and court costs, which is an increase of $12,300 per year over the amount expended in fiscal 1988. In preparing the 1993 biennial budget for legislative consideration, the maximum amount of expenditures from the legal and court cost expenditure code to be included by the office of budget and program planning and the legislative fiscal analyst's office in the current level bases is $17,700.

Item 8a contains $110,000 per year for contracting with the department of livestock for predator control, which is an increase of $20,000 per year over the amount expended in fiscal 1988. In preparing the 1993 biennial budget for legislative consideration, the maximum amount of expenditures from the grant to the department of livestock expenditure code to be included by the office of budget and program planning and the legislative fiscal analyst's office in the current level bases is $90,000.

Item 8b contains a $150,000 biennial appropriation for a saline seep control program. In preparing the 1993 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from the program in the current level base.

Item 8b must be used by the department to contract with landowners in cooperation with the Montana salinity control association for salinity control programs that provide benefits to fish and wildlife habitats. Salinity control projects that involve privately owned land must be financed on a cost-share basis under guidelines developed by the department. The guidelines must be consistent with the legislation establishing the funding source and complying with federal funding guidelines.

Item 8d contains $50,000 of hunting and fishing license funds and $50,000 of federal funds allocated to Montana for fisheries management. The $50,000 of hunting and fishing license income and the $50,000 of federal funds may only be expended if $50,000 of local/private funds and $150,000 from the federal bureau of land management are made available.

The department is authorized to make a permanent loan from its state special revenue fund to its federal special revenue fund to provide adequate cash flow for federal programs that reimburse the department after expenditures are incurred and paid.

If the department receives private funds for the costs of the fisheries, wildlife, parks, or conservation education divisions, it may increase its state special revenue appropriation and decrease its federal revenue appropriation by like amounts to implement the provisions of SB 80.

The appropriation for the legislative contract authority in items 1c, 3c, 4b, 5b, and 8c is subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION | | | | | | | | | | |
| 1. Centralized Services | | | | | | | | | | |
| a. Operations | 1,145,229 | 396,353 | 28,000 | | 1,569,582 | 1,152,725 | 396,016 | 19,000 | | 1,567,741 |
| b. Audit | 35,973 | | | | 35,973 | | | | | |
| 2. Oil and Gas | | 1,099,376 | | | 1,099,376 | | 1,093,070 | | | 1,093,070 |
| 3. Conservation Districts | 62,893 | 555,687 | 42,703 | | 661,283 | 70,660 | 546,239 | 42,703 | | 659,602 |
| 4. Reserved Water Rights Compact Commission | 160,794 | 225,000 | | | 385,794 | 162,264 | 275,000 | | | 437,264 |
| 5. Water Resources | | | | | | | | | | |
| a. Operations | 2,275,752 | 2,533,986 | 50,000 | | 4,859,738 | 2,295,146 | 2,529,039 | 50,000 | | 4,874,185 |
| b. State Water Projects | | 775,000 | | | 775,000 | | | | | |
| c. Missouri River Reservation | 81,428 | 340,000 | 42,000 | | 463,428 | 82,134 | | | | 82,134 |
| 6. Energy Division | | | | | | | | | | |
| a. Operations | 465,553 | 1,186,087 | 1,074,363 | | 2,726,003 | 472,568 | 1,184,665 | 1,072,279 | | 2,729,512 |
| b. Lake Broadview Mitigation | | 40,000 | | | 40,000 | | | | | |
| c. Rock Creek Mitigation | | 1,650,000 | | | 1,650,000 | | | | | |
| Total | 4,227,622 | 8,801,489 | 1,237,066 | | 14,266,177 | 4,235,497 | 6,024,029 | 1,183,982 | | 11,443,508 |

Items 5b, 5c, 6b, and 6c are biennial appropriations.

The board of oil and gas conservation is appropriated $110,000 per year from federal special revenues contingent upon receiving federal funds from the environmental protection agency for the underground injection control program.

The department is authorized up to $700,000 from the account established in 76-14-112 for rangeland loans during the 1991 biennium.

All funds deposited into the state special revenue account established in 76-15-530 are appropriated to the department for distribution as grants to conservation districts.

Item 5a contains $5,100 per year to develop a video and to purchase television time on floodplains. The $5,100 per year may only be expended if the department receives a federal grant for developing the video and purchasing the television time.

There is appropriated $4 million federal special revenue contingent upon the department receiving a grant or loan from the federal government for Middle Creek Dam.

There is appropriated $125,000 state special revenue contingent upon the department receiving a grant from the Montana power company for the purposes of conducting builder training and agricultural workshops.

There is appropriated $20,000 federal special revenue contingent upon the department receiving a grant from the western area power administration for the purposes of conducting builder training and agricultural workshops.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF COMMERCE | | | | | | | | |
| 1. Director's Office Management Services | | | | | | | | |
| a. Operations | 100,004 | 720,248 | 820,252 | 98,797 | | | 703,155 | 801,952 |
| b. Audit | | 66,412 | 66,412 | | | | | |
| c. Director's Travel | | 13,367 | 13,367 | | | | 13,627 | 13,627 |
| 2. Business Licensing and Regulation - Director | 94,470 | 62,714 | 157,184 | | 94,470 | | 62,392 | 156,862 |
| 3. Building Codes | 34,874 | 1,206,764 | | 1,241,638 | 33,016 | 1,201,438 | | 1,234,454 |
| 4. Professional and Occupational Licensing | 1,839,641 | 763,484 | 2,603,125 | | 1,813,145 | 780,137 | | 2,593,282 |
| 5. Milk Control Bureau | 276,211 | | | 276,211 | | 274,786 | | 274,786 |
| 6. Weights and Measures Bureau | 458,319 | | | 458,319 | 457,716 | | | 457,716 |
| 7. Financial Division | 804,261 | | | 804,261 | | 799,936 | | 799,936 |

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| 8. Aeronautics Division | | | | | | | | | | |
| | | 639,101 | 75,000 | 51,327 | 765,428 | | 612,214 | 75,000 | 51,381 | 738,595 |
| 9. Transportation Division | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 436,918 | 71,250 | 901,612 | | 1,409,780 | 418,663 | 71,250 | 901,118 | | 1,391,031 |
| b. McCarty Farms | | | | | | | | | | |
| | 180,000 | | | | 180,000 | | | | | |
| c. Federal Rail Planning | | | | | | | | | | |
| | | | 500,000 | | 500,000 | | | | | |
| d. Rail Construction Loan Fund | | | | | | | | | | |
| | | 1,054,879 | | | 1,054,879 | | | | | |
| 10. Business Assistance | | | | | | | | | | |
| | 714,866 | 348,016 | 281,840 | | 1,344,722 | 704,855 | 348,016 | 276,430 | | 1,329,301 |
| 11. Montana Promotion | | | | | | | | | | |
| | | 4,691,596 | | | 4,691,596 | | 4,691,519 | | | 4,691,519 |
| 12. Board of Housing | | | | | | | | | | |
| | | | | 2,230,970 | 2,230,970 | | | | 2,128,800 | 2,128,800 |
| 13. Local Government Administration | | | | | | | | | | |
| | | | | 99,229 | 99,229 | | | | 98,970 | 98,970 |
| 14. Housing Assistance | | | | | | | | | | |
| | | | 12,689,153 | | 12,689,153 | | | 12,687,065 | | 12,687,065 |
| 15. Local Government Audit Service | | | | | | | | | | |
| | 46,126 | | | 1,018,711 | 1,064,837 | 45,867 | | | 1,017,623 | 1,063,490 |
| 16. Local Government Systems | | | | | | | | | | |
| a. Administration | | | | | | | | | | |
| | 86,209 | | | 149,628 | 235,837 | 86,209 | | | 139,523 | 225,732 |
| b. District Court Reimbursement | | | | | | | | | | |
| | 2,600,000 | | | | 2,600,000 | 2,826,000 | | | | 2,826,000 |
| c. County Planning | | | | | | | | | | |
| | | 203,270 | | | 203,270 | | 183,168 | | | 183,168 |
| 17. Community Development | | | | | | | | | | |
| | 208,242 | 3,593,637 | 5,090,984 | | 8,892,863 | 212,896 | 3,049,816 | 5,085,833 | | 8,348,545 |
| 18. Board of Investments | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | | | | 1,240,799 | 1,240,799 | | | | 1,238,086 | 1,238,086 |
| b. Audit | | | | | | | | | | |
| | | | | 48,162 | 48,162 | | | | 42,891 | 42,891 |
| c. Conservation Reserve Enhancement Program | | | | | | | | | | |
| | | | | 250,000 | 250,000 | | | | 250,000 | 250,000 |
| 19. Health Facility Authority | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | | | | 133,326 | 133,326 | | | | 133,424 | 133,424 |
| b. Audit | | | | | | | | | | |
| | | | | 650 | 650 | | | | 4,561 | 4,561 |
| 20. Montana Science and Technology Alliance | | | | | | | | | | |
| | 460,014 | | | | 460,014 | 471,486 | | | | 471,486 |
| 21. Lottery | | | | | | | | | | |
| | | | | 2,941,351 | 2,941,351 | | | | 2,900,451 | 2,900,451 |
| 22. Board of Horseracing | | | | | | | | | | |
| | | 315,642 | | | 315,642 | | 315,135 | | | 315,135 |
| 23. Video Gaming | | | | | | | | | | |
| | | 818,818 | | | 818,818 | | 796,335 | | | 796,335 |
| 24. Indian Affairs Coordinator | | | | | | | | | | |
| | 92,069 | | | | 92,069 | 91,613 | | | | 91,613 |
| 25. Research and Information Services | | | | | | | | | | |
| | 241,921 | | | | 241,921 | 286,929 | | | | 286,929 |
| Total | | | | | | | | | | |
| | 5,659,562 | 15,957,556 | 19,538,589 | 9,790,378 | 50,946,085 | 5,734,047 | 14,251,228 | 19,025,446 | 9,565,021 | 48,575,742 |

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |

Travel costs of all staff members in the director's office may be funded only from item 1c.

There is appropriated to the hard-rock mining board up to $1,200,000 in each year of the biennium only for the purposes detailed in 90-6-304(1), 90-6-307, 90-6-311, and 90-6-321.

The hard-rock mining board shall report to the legislature any expenditures from the hard-rock mitigation and arbitration account.

If the board of milk control receives a petition to establish a state pooling arrangement as a method of paying producer prices, the department may request a budget amendment for additional operating costs for holding hearings and establishing the pool. Receipt of the petition is an emergency under 17-7-403.

The appropriation in item 9b is for litigation costs for the McCarty Farms case. The department shall seek to recover the general fund expenditures plus interest at a rate of 10% from any settlement in this case.

The board of horseracing may request a budget amendment for the cost of implementing harness racing in Montana. The request is an emergency under 17-7-403.

The board of horseracing may request a budget amendment to implement the mandated federal requirements of regulation on Indian reservations. The request meets the emergency provisions of 17-7-403.

The board of investments may use designated commissions paid on the purchase and sale of securities for products and services customarily provided by brokers for such transactions according to applicable securities industries rules and regulations and Montana statutes. The board shall make a report to the 52nd legislature on the use of the designated commissions.

The video gaming control bureau may request a budget amendment to incur expenses pursuant to agreements with other states to provide gaming machine testing and training services should such requests materialize. The expenses constitute an emergency for budget amendment purposes under 17-7-403.

The video gaming control bureau may request a budget amendment to implement the mandated federal requirements of regulation on Indian reservations. The request meets the emergency provisions of 17-7-403.

If the revenues deposited to the general fund through implementation of 61-3-509 are less than the appropriation for district court reimbursement, the department shall reduce the reimbursement to equal the revenues generated.

The unexpended private funds of $16,589 for the supercollider effort are deposited to the general fund, and there is a general fund appropriation of $16,589 to the department for the Montana ambassadors program to be used for projects that will promote new business or jobs. Any use of the funds will require a majority approval by the Montana ambassadors board of directors.

All income deposited to the science and technology development special revenue account created in HB 683 is appropriated to the Montana board of science and technology development.

Item 12 includes $24,300 in each year in the proprietary fund that is contingent upon passage of SB 115.

The funding source for item 18c is bonds proceeds to administer the conservation reserve enhancement program in HB 717. No fund transfers may be made into or out of this line item.

Items 9b, 9c, 9d, and 18b are biennial appropriations.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| TOTAL SECTION C | | | | | | | | | | |
| 22,104,145 | 59,282,418 | 39,825,285 | 12,559,515 | 133,771,363 | 21,819,835 | 52,338,365 | 38,158,161 | 12,351,129 | 124,667,490 | |

## D. DEPARTMENT OF INSTITUTIONS

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| CENTRAL OFFICE | | | | | | | | | |
| 1. Director's Office | | | | | | | | | |
| 390,418 | | | | 390,418 | 391,609 | | | | 391,609 |
| 2. Management Services Division | | | | | | | | | |
| a. Management Services | | | | | | | | | |
| 831,751 | | | | 831,751 | 831,985 | | | | 831,985 |
| b. Audit | | | | | | | | | |
| 141,131 | 4,296 | 7,637 | 6,047 | 159,111 | | | | | |
| 3. Alcohol and Drug Abuse Division | | | | | | | | | |
| 215,200 | 335,524 | 1,848,757 | | 2,399,481 | 215,200 | 321,891 | 1,879,967 | | 2,417,058 |
| 4. Corrections Division | | | | | | | | | |
| a. Central Office | | | | | | | | | |
| 4,062,883 | 1,000 | 71,662 | | 4,135,545 | 4,020,873 | 1,000 | | | 4,021,873 |
| b. Women's Corrections | | | | | | | | | |
| 1,062,742 | | | | 1,062,742 | 1,048,655 | | | | 1,048,655 |
| c. Corrections Medical | | | | | | | | | |
| 720,706 | | | | 720,706 | 720,499 | | | | 720,499 |
| d. Montana State Prison | | | | | | | | | |
| i. Care and Custody — Operations | | | | | | | | | |
| 13,160,642 | 52,008 | 100,722 | | 13,313,372 | 13,320,011 | 51,994 | 100,777 | | 13,472,782 |
| ii. Ranch and Dairy Operations | | | | | | | | | |
| | | | 1,260,550 | 1,260,550 | | | | 1,267,519 | 1,267,519 |
| iii. Ranch and Dairy Equipment | | | | | | | | | |
| | | | 533,400 | 533,400 | | | | | |
| iv. Ranch and Dairy Capital Projects | | | | | | | | | |

| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| | | | | 33,000 | 33,000 | | | | | |
| v. License Plate Factory Operations | 457,499 | | | | 457,499 | 501,920 | | | | 501,920 |
| vi. License Plate Factory Contingency | 20,018 | | | | 20,018 | 30,018 | | | | 30,018 |
| vii. Industries Operations | | | | 979,149 | 979,149 | | | | 1,112,217 | 1,112,217 |
| viii. Canteen Operations | | 931,869 | | | 931,869 | | 1,159,250 | | | 1,159,250 |
| ix. Industries Training Operations | 170,110 | | 26,991 | 246,493 | 443,594 | 173,789 | | 26,983 | 252,513 | 453,285 |
| e. Swan River Forest Camp | | | | | | | | | | |
| i. Operations | 847,924 | 85,002 | 29,598 | | 962,524 | 840,437 | 87,016 | 29,598 | | 957,051 |
| ii. Insurance | 27,246 | | | | 27,246 | 28,372 | | | | 28,372 |
| 5. Mental Health Division | | | | | | | | | | |
| a. Central Office | | | | | | | | | | |
| i. Operations | 4,042,659 | | 1,760,758 | | 5,803,417 | 4,043,395 | | 1,690,714 | | 5,734,109 |
| ii. Community Mental Health Centers | 102,250 | | | | 102,250 | 206,545 | | | | 206,545 |
| b. Montana Developmental Center | 12,490,419 | 49,000 | 23,336 | | 12,562,755 | 12,556,576 | 49,000 | 22,385 | | 12,627,961 |
| c. Center for the Aged | 2,951,158 | 17,035 | | | 2,968,193 | 2,970,077 | 15,135 | | | 2,985,212 |
| d. Eastmont | 2,435,744 | 700 | | | 2,436,444 | 2,428,164 | 700 | | | 2,428,864 |
| e. Veterans' Home | | | | | | | | | | |
| i. General Operations | 740,899 | 976,364 | 733,770 | | 2,451,033 | 772,359 | 976,364 | 733,770 | | 2,482,493 |
| ii. Equipment | 11,654 | | | | 11,654 | | | | | |
| f. Montana State Hospital | 20,176,183 | 1,748,437 | 2,174 | | 21,926,794 | 20,547,869 | 1,748,964 | 2,254 | | 22,299,087 |
| 6. Board of Pardons | | | | | | | | | | |
| a. Operations | 171,656 | | | | 171,656 | 157,025 | | | | 157,025 |
| b. Out-of-State Travel | 4,838 | | | | 4,838 | 4,838 | | | | 4,838 |
| Total | 65,235,730 | 4,201,235 | 4,605,405 | 3,058,639 | 77,101,009 | 65,810,216 | 4,411,314 | 4,486,448 | 2,632,249 | 77,340,227 |

Within item 4, transfers may be made between line items in excess of 5% of the total appropriation authority in each line item upon approval of the governor or his designated representative.

Within item 5, transfers may be made between line items in excess of 5% of the total appropriation authority in each line item upon approval of the governor or his designated representative.

Items 2b, 4diii, 4div, and 5eii are biennial appropriations.

The department is authorized to maintain a cash balance of not more than $16,000 at the end of each fiscal year in the prison industries training proprietary account. Any funds in excess of $16,000 in the proprietary account are subject to the provisions of section 3.

Notwithstanding section 7, if the department of institutions is unable to recruit and hire professional positions funded in the appropriation and required for patient treatment and/or certification, it may transfer up to 100% of the aggregate personal services cost of each class of vacant position or the cost of the required contract, whichever is the lesser, to operating expenses for the purpose of contracting for services that would have been provided if that position were filled.

The department shall certify to the governor or his designated representative that:

(1) the department is unable to fill the position(s); and

(2) the services that would be provided by that position if filled and by the proposed contract are necessary for either federal medicaid certification or the treatment requirements of its correctional institutions.

The administration shall negotiate with registered nurses employed at state institutions concerning classification and pay exceptions for the purpose of halting the loss of these skilled health care professionals to the private sector.

Within item 4dvii, the department may submit budget amendments to hire 1.0 FTE marketing representative, 2.0 FTE shop supervisors, and 1.0 FTE prison industries procurement coordinator, if funding is available.

Within item 4dix, the department may submit budget amendments to hire a 0.25 FTE horticulturalist and a 1.0 FTE vehicle maintenance shop supervisor, if funding is available.

The department shall report to the 1991 legislature on the status of the sex offender treatment program at Montana state prison. The report must include but not be limited to a comparison between the 1989 and 1991 bienniums of the following:

(1) the number of sex offenders participating in the program;

(2) the number completing each of the three phases of the program;

(3) the number paroled and the percent of the total sex offender population paroled; and

(4) the average length of stay in Montana state prison of the sex offender population.

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| MONTANA ARTS COUNCIL | | | | | | | | | | |
| 1. Administration | 117,933 | 111,717 | 344,655 | | 574,305 | 124,334 | 110,064 | 336,480 | | 570,878 |
| 2. Audit | 13,836 | | | | 13,836 | | | | | |
| Total | 131,769 | 111,717 | 344,655 | | 588,141 | 124,334 | 110,064 | 336,480 | | 570,878 |
| MONTANA STATE LIBRARY | | | | | | | | | | |
| 1. Reference and Information | 585,993 | 208,138 | 1,003,976 | | 1,798,107 | 584,274 | 170,000 | 1,014,822 | | 1,769,096 |
| 2. Audit | 15,219 | | | | 15,219 | | | | | |
| 3. Natural Heritage Program | | 349,092 | 53,268 | | 402,360 | | 318,866 | 16,092 | | 334,958 |
| Total | 601,212 | 557,230 | 1,057,244 | | 2,215,686 | 584,274 | 488,866 | 1,030,914 | | 2,104,054 |

The amounts included in item 1 in the federal special revenue column represent Library Services and Construction Act funds that may be transferred between fiscal 1990 and 1991.

In item 1, the 199,000 and 168,000 figures are coal severance tax funds. In the event the coal severance tax revenues allocated to the state library under 15-35-108(3)(g) exceed the amounts appropriated to the state library for fiscal 1990 and 1991, the additional funds are appropriated to the Montana state library for pass through to the library federations.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| MONTANA HISTORICAL SOCIETY | | | | | | | | | | |
| 1. Administration | | | | | | | | | | |
| a. Operations | 492,133 | 151,589 | 31,693 | | 675,415 | 494,036 | 142,072 | 31,711 | | 667,819 |
| b. Audit | 14,140 | | | | 14,140 | | | | | |
| 2. Library Program | 373,788 | 118,020 | | | 491,808 | 356,145 | 56,866 | | | 413,011 |
| 3. Museum Program | 208,409 | 41,630 | | | 250,039 | 207,787 | 23,630 | | | 231,417 |
| 4. Publications Program | | | | | | | | | | |
| a. Operations | 43,854 | | | 440,077 | 483,931 | 43,861 | | | 439,166 | 483,027 |
| b. Audit | | | | 1,161 | 1,161 | | | | | |
| 5. Historical Sites Preservation Program | | | | | | | | | | |
| a. Operations | 68,104 | | 545,333 | | 613,437 | 68,920 | | 553,215 | | 622,135 |
| b. Audit | 650 | | 3,419 | | 4,069 | | | | | |
| Total | 1,201,078 | 311,239 | 580,445 | 441,238 | 2,534,000 | 1,170,749 | 222,568 | 584,926 | 439,166 | 2,417,409 |
| TOTAL SECTION D | 67,169,789 | 5,181,421 | 6,587,749 | 3,499,877 | 82,438,836 | 67,689,573 | 5,232,812 | 6,438,768 | 3,071,415 | 82,432,568 |

## E. OTHER EDUCATION

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| BOARD OF PUBLIC EDUCATION | | | | | | | | | | |
| 1. Board Administration | | | | | | | | | | |
| a. Operations | 116,683 | | | | 116,683 | 111,004 | | | | 111,004 |
| b. Audit | 2,214 | | | | 2,214 | | | | | |
| Total | 118,897 | | | | 118,897 | 111,004 | | | | 111,004 |
| 2. Advisory Council | | 67,650 | | | 67,650 | | 67,650 | | | 67,650 |
| 3. Montana School for the Deaf and Blind | | | | | | | | | | |
| a. Administration | 191,143 | | | | 191,143 | 186,341 | | | | 186,341 |
| b. General Services | 269,525 | | | | 269,525 | 276,051 | | | | 276,051 |
| c. Student Services | | | | | | | | | | |

| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| | 711,326 | | 38,000 | | 749,326 | 714,196 | | 38,000 | | 752,196 |
| d. Student Services - Annual Leave and Holiday Pay | | | | | | | | | | |
| | 18,883 | | | | 18,883 | 19,432 | | | | 19,432 |
| e. Education | | | | | | | | | | |
| | 1,043,039 | 147,307 | 169,494 | | 1,359,840 | 1,043,091 | 147,307 | 169,494 | | 1,359,892 |
| f. Education - Annual Leave and Holiday Pay | | | | | | | | | | |
| | 111,831 | | | | 111,831 | 114,843 | | | | 114,843 |
| g. Audit | | | | | | | | | | |
| | 17,710 | | | | 17,710 | | | | | |
| Total | | | | | | | | | | |
| | 2,363,457 | 147,307 | 207,494 | | 2,718,258 | 2,353,954 | 147,307 | 207,494 | | 2,708,755 |

The appropriation in items 3d and 3f may only be used to pay annual leave and holiday pay for the contract staff at the school for the deaf and blind.

OFFICE OF PUBLIC INSTRUCTION

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1. State Superintendent's Office | | | | | | | | | | |
| | 404,769 | | | | 404,769 | 401,920 | | | | 401,920 |
| 2. Central Services | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 1,295,090 | 5,000 | 27,784 | 908,264 | 2,236,138 | 1,356,087 | 5,000 | 27,784 | 904,721 | 2,293,592 |
| b. Audit | | | | | | | | | | |
| | 45,324 | | | | 45,324 | | | | | |
| 3. Educational Services | | | | | | | | | | |
| | 1,088,725 | 271,260 | 2,647,311 | | 4,007,296 | 1,044,113 | 277,053 | 2,622,296 | | 3,943,462 |
| Total | | | | | | | | | | |
| | 2,833,908 | 276,260 | 2,675,095 | 908,264 | 6,693,527 | 2,802,120 | 282,053 | 2,650,080 | 904,721 | 6,638,974 |

Funding of $62,920 in fiscal 1990 and $86,080 in fiscal 1991 in item 2a is contingent on passage of SB 203.

OFFICE OF PUBLIC INSTRUCTION -- DISTRIBUTION TO SCHOOLS

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1. Special Education | | | | | | | | | | |
| | 33,361,646 | | | | 33,361,646 | 33,361,646 | | | | 33,361,646 |
| 2. Special Education Contingency | | | | | | | | | | |
| | 500,000 | | | | 500,000 | 500,000 | | | | 500,000 |
| 3. Transportation | | | | | | | | | | |
| | 6,252,894 | | | | 6,252,894 | 6,252,894 | | | | 6,252,894 |
| 4. School Foods | | | | | | | | | | |
| | 599,397 | | | | 599,397 | 599,397 | | | | 599,397 |
| 5. Secondary Vocational Education | | | | | | | | | | |
| | 900,000 | | | | 900,000 | 900,000 | | | | 900,000 |
| 6. Impact Aid | | | | | | | | | | |
| | 5,000 | | | | 5,000 | 5,000 | | | | 5,000 |
| 7. Gifted and Talented | | | | | | | | | | |
| | 100,000 | | | | 100,000 | 100,000 | | | | 100,000 |
| 8. Adult Basic Education | | | | | | | | | | |
| | 200,000 | | | | 200,000 | 250,000 | | | | 250,000 |
| Total | | | | | | | | | | |
| | 41,918,937 | | | | 41,918,937 | 41,968,937 | | | | 41,968,937 |

Item 2, a biennial appropriation, is for emergencies that may arise in special education programs in local districts. A district board of trustees may apply for an allocation from these funds by presenting to the superintendent of public instruction, for each child, a child-study team (CST) report and an individual education plan (IEP) relating to this unforeseen expense or, if the need for additional personnel is due to case load excess, a board of trustees verification of completed IEPs and CSTs. In addition, a current listing of program, case loads, and related costs must be submitted. Contingency funds may be awarded for positions that have gone unfilled for an entire school year and for which regular state special education funds were not awarded.

There is appropriated in item 8 general fund of $146,095 in fiscal 1990 and $146,095 in fiscal 1991 to replace education trust fund interest earnings. If education trust fund interest earnings become available during the biennium, then one dollar of general fund will revert for each dollar of education trust interest earnings.

OFFICE OF PUBLIC INSTRUCTION -- DISCRETIONARY GRANTS

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1. Vocational Education | | | | | | | | | | |
| | | 2,500,000 | | | 2,500,000 | | | 2,500,000 | | 2,500,000 |
| 2. Education of the Handicapped -- Part B | | | | | | | | | | |
| | | 425,000 | | | 425,000 | | | 505,000 | | 505,000 |
| 3. Preschool Incentive Grants | | | | | | | | | | |
| | | 50,000 | | | 50,000 | | | 50,000 | | 50,000 |
| 4. Job Training Partnership | | | | | | | | | | |
| | | 508,602 | | | 508,602 | | | 508,602 | | 508,602 |
| 5. Adult Basic Education | | | | | | | | | | |

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| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| | | | 475,208 | | 475,208 | | | 498,968 | | 498,968 |
| 6. McKinney Homeless Act | | | | | | | | | | |
| | | | 140,414 | | 140,414 | | | 70,212 | | 70,212 |
| 7. Education of the Handicapped — Architectural | | | | | | | | | | |
| | | | 32,000 | | 32,000 | | | | | |
| Total | | | | | | | | | | |
| | | | 4,131,224 | | 4,131,224 | | | 4,132,782 | | 4,132,782 |
| STATE COUNCIL FOR VOCATIONAL EDUCATION | | | | | | | | | | |
| 1. Operations | | | | | | | | | | |
| | | | 133,823 | | 133,823 | | | 134,182 | | 134,182 |
| 2. Audit | | | | | | | | | | |
| | | | 3,736 | | 3,736 | | | | | |
| Total | | | | | | | | | | |
| | | | 137,559 | | 137,559 | | | 134,182 | | 134,182 |
| TOTAL SECTION E | | | | | | | | | | |
| | 47,235,199 | 491,217 | 7,151,372 | 908,264 | 55,786,052 | 47,236,015 | 497,010 | 7,124,538 | 904,721 | 55,762,284 |

## F. HIGHER EDUCATION

All funds, other than plant funds and current unrestricted operating funds, may be spent and are appropriated contingent upon approval of the comprehensive program budget by the board of regents by July 1 of each year. The budget must contain detailed revenues and expenditures and anticipated fund balances of current funds, loan funds, and endowment funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university budgets include instruction, organized research, public service, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowships.

The six university units shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classification structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

Each year of the biennium, the portion of indirect cost reimbursements that exceeds the amount set forth in the current unrestricted operating subfund appropriation for each unit is appropriated to the respective unit. All indirect cost reimbursement not expended in the current unrestricted operating subfund account must be clearly identified and separately accounted for during the 1991 biennium.

Included within current unrestricted funds to the six institutions is the sum of $12,050,000 in fiscal 1990 and $12,022,000 in fiscal 1991 from revenues generated under the provisions of 20-25-423. The department of revenue shall levy the full 6 mills as authorized in 20-25-423. Revenues received by the university system under the provisions of 20-25-423 that exceed $12,050,000 in fiscal 1990 and $12,022,000 in fiscal 1991 must cause a general fund reversion of a like amount each year.

Research grant indirect costs retained at the various units of the university system in funds other than the current unrestricted subfund must be expended for the enhancement of existing research programs, assistance to and encouragement of new research programs, and the general support of research.

There is appropriated for higher education programs general fund of $465,000 in fiscal 1990 and $592,000 in fiscal 1991 to replace education trust fund interest earnings. If education trust fund interest earnings become available during the biennium, then one dollar of general fund appropriated for higher education programs will revert for each dollar of education trust interest earnings.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| COMMISSIONER OF HIGHER EDUCATION | | | | | | | | | | |
| 1. Office Administration | | | | | | | | | | |
| a. Operations | | | | | | | | | | |
| | 804,601 | | | | 804,601 | 801,403 | | | | 801,403 |
| b. Audit | | | | | | | | | | |
| | 16,487 | | | | 16,487 | | | | | |
| 2. WICHE Dues | | | | | | | | | | |
| | 65,100 | | | | 65,100 | 68,400 | | | | 68,400 |
| 3. WICHE - Student Assistance | | | | | | | | | | |
| | 1,664,400 | | | | 1,664,400 | 1,657,667 | | | | 1,657,667 |
| 4. WAMI | | | | | | | | | | |
| | 2,057,872 | | | | 2,057,872 | 2,152,280 | | | | 2,152,280 |
| 5. Minnesota Rural Dentistry | | | | | | | | | | |
| | 93,600 | | | | 93,600 | 95,200 | | | | 95,200 |
| 6. State Student Incentive Grants | | | | | | | | | | |
| | 220,000 | | 220,000 | | 440,000 | 220,000 | | 220,000 | | 440,000 |
| 7. Carl Perkins Loan | | | | | | | | | | |
| | 55,000 | | | | 55,000 | 55,000 | | | | 55,000 |

| | Fiscal 1990 | | | | | Fiscal 1991 | | | |
|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| 8. State College Work Study | 391,586 | | | | 391,586 | 391,587 | | | | 391,587 |
| 9. Supplemental Educational Opportunity Grant | 46,921 | | | | 46,921 | 99,056 | | | | 99,056 |
| 10. Paul Douglas Teacher Grants | | | 82,728 | | 82,728 | | | 82,728 | | 82,728 |
| 11. Education for Economic Security | | | 161,561 | | 161,561 | | | 161,561 | | 161,561 |
| 12. Talent Search | | | | | | | | | | |
| a. Operations | | | 213,639 | | 213,639 | | | 184,409 | | 184,409 |
| b. Audit | | | 1,500 | | 1,500 | | | | | |
| 13. Guaranteed Student Loan | | | | | | | | | | |
| a. Operations | | | 1,567,791 | | 1,567,791 | | | 1,375,166 | | 1,375,166 |
| b. Audit | | | 6,088 | | 6,088 | | | | | |
| 14. University System Group Insurance | | | | 10,295,000 | 10,295,000 | | | | 11,750,000 | 11,750,000 |
| 15. Vocational-Technical Administration | 83,689 | | 143,690 | | 227,379 | 80,637 | | 140,637 | | 221,274 |
| 16. Vocational Education Grants | | | 4,584,497 | | 4,584,497 | | | 4,587,550 | | 4,587,550 |
| 17. Board of Regents | 32,817 | | | | 32,817 | 32,868 | | | | 32,868 |
| 18. Vocational-Technical Bond Payments | 730,905 | | | | 730,905 | 717,068 | | | | 717,068 |
| Total | 6,262,978 | | 6,981,494 | 10,295,000 | 23,539,472 | 6,371,166 | | 6,752,051 | 11,750,000 | 24,873,217 |

In each fiscal year, the commissioner of higher education is allowed to transfer appropriation authority between the amounts included in the WICHE appropriation for dentistry, which is $144,300 in fiscal 1990 and $134,867 in fiscal 1991, and the Minnesota rural dentistry appropriation.

Item 18 may not be expended unless the board of regents obtains a contract from the school district that ensures that the state of Montana shall receive deed to the vocational-technical center facility for the cost of retiring the outstanding bond.

| FIRE SERVICES TRAINING SCHOOL | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1. Operations | 217,158 | | 31,772 | 248,930 | 207,022 | | 28,933 | 235,955 |
| 2. Audit | 2,214 | | | 2,214 | | | | |
| 3. Training Delivery | | | 20,000 | 20,000 | | | | |
| Total | 219,372 | | 51,772 | 271,144 | 207,022 | | 28,933 | 235,955 |

The fire services training school must be provided office, classroom, and storage space in the Great Falls vocational-technical center at no charge.

Item 3 is a biennial appropriation.

| | Fiscal 1990 | | | Fiscal 1991 | | |
|---|---|---|---|---|---|---|
| | General Fund | Current Unrestricted | Total | General Fund | Current Unrestricted | Total |
| COMMUNITY COLLEGES | | | | | | |
| 1. Dawson Community College | | | | | | |
| a. Operations | 714,317 | | 714,317 | 714,317 | | 714,317 |
| b. Audit | 8,460 | | 8,460 | | | |
| 2. Flathead Valley Community College | | | | | | |
| a. Operations | 1,709,586 | | 1,709,586 | 1,709,586 | | 1,709,586 |
| b. Audit | 8,460 | | 8,460 | | | |
| 3. Miles Community College | | | | | | |
| a. Operations | | | | | | |

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| | Fiscal 1990 | | | Fiscal 1991 | | |
|---|---|---|---|---|---|---|
| | General Fund | Current Unrestricted | Total | General Fund | Current Unrestricted | Total |
| | 758,388 | | 758,388 | 758,388 | | 758,388 |
| b. Audit | 8,460 | | 8,460 | | | |
| Total | 3,207,671 | | 3,207,671 | 3,182,291 | | 3,182,291 |

The above appropriation provides 47% of the total unrestricted budgets for the community colleges, which budgets must be approved by the board of regents.

The general fund appropriation for each community college includes 47% of the total audit cost. The remaining 53% of these costs are to be paid from funds other than those appropriated in items 1 through 3. Audit costs may not exceed $18,000 for each unit for the biennium.

Dawson, Flathead Valley, and Miles community colleges are prohibited from including in student enrollment, used in calculating the unrestricted budget referred to in 20-15-310, student FTE from out-of-district centers not approved under board of regents Policy 220.1.

BILLINGS VOCATIONAL-TECHNICAL CENTER

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Instruction | 857,314 | 167,485 | 1,024,799 | 882,097 | 142,702 | 1,024,799 |
| 2. Plant Operation and Maintenance | 131,071 | 146,328 | 277,399 | 121,917 | 155,482 | 277,399 |
| 3. Support | | | | | | |
| a. Operations | | 514,989 | 514,989 | | 514,989 | 514,989 |
| b. Audit | 22,414 | | 22,414 | | | |
| Total | 1,010,799 | 828,802 | 1,839,601 | 1,004,014 | 813,173 | 1,817,187 |

Total audit costs are estimated to be $24,904 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 3.

BUTTE VOCATIONAL-TECHNICAL CENTER

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Instruction | 925,747 | | 925,747 | 925,747 | | 925,747 |
| 2. Plant Operation and Maintenance | 207,451 | 2,231 | 209,682 | 208,091 | 1,591 | 209,682 |
| 3. Support | | | | | | |
| a. Operations | | 519,912 | 519,912 | | 519,912 | 519,912 |
| b. Audit | 22,414 | | 22,414 | | | |
| Total | 1,155,612 | 522,143 | 1,677,755 | 1,133,838 | 521,503 | 1,655,341 |

Total audit costs are estimated to be $24,904 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 3.

GREAT FALLS VOCATIONAL-TECHNICAL CENTER

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Instruction | 1,167,372 | 48,771 | 1,216,143 | 1,161,826 | 54,317 | 1,216,143 |
| 2. Plant Operation and Maintenance | 128,261 | 143,192 | 271,453 | 119,304 | 152,149 | 271,453 |
| 3. Support | | | | | | |
| a. Operations | | 465,854 | 465,854 | | 465,854 | 465,854 |
| b. Audit | 22,414 | | 22,414 | | | |
| Total | 1,318,047 | 657,817 | 1,975,864 | 1,281,130 | 672,320 | 1,953,450 |

Total audit costs are estimated to be $24,904 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 3.

HELENA VOCATIONAL-TECHNICAL CENTER

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Instruction | 1,440,026 | | 1,440,026 | 1,440,026 | | 1,440,026 |
| 2. Plant Operation and Maintenance | 224,252 | 180,670 | 404,922 | 240,523 | 164,399 | 404,922 |
| 3. Support | | | | | | |
| a. Operations | | | | | | |

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| | General Fund | Fiscal 1990 Current Unrestricted | Total | General Fund | Fiscal 1991 Current Unrestricted | Total |
|---|---|---|---|---|---|---|
| | | 616,112 | 616,112 | | 616,112 | 616,112 |
| b. Audit | 22,414 | | 22,414 | | | |
| Total | 1,686,692 | 796,782 | 2,483,474 | 1,680,549 | 780,511 | 2,461,060 |

Total audit costs are estimated to be $24,904 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 3.

MISSOULA VOCATIONAL-TECHNICAL CENTER

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Instruction | 1,514,445 | | 1,514,445 | 1,514,445 | | 1,514,445 |
| 2. Plant Operation and Maintenance | 347,897 | 5,581 | 353,478 | 310,574 | 42,904 | 353,478 |
| 3. Support | | | | | | |
| a. Operations | 35,051 | 721,419 | 756,470 | 45,337 | 711,133 | 756,470 |
| b. Audit | 22,414 | | 22,414 | | | |
| Total | 1,919,807 | 727,000 | 2,646,807 | 1,870,356 | 754,037 | 2,624,393 |

Total audit costs are estimated to be $24,904 for the biennium. Ten percent of these costs are to be paid from funds other than those appropriated in items 1 through 3.

EMPLOYEE CLASSIFICATION CONVERSION

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Personal Services | 36,762 | | 36,762 | 36,762 | | 36,762 |

The amounts in item 1 are for anticipated employee classification costs when the vocational-technical center employees become part of the state pay and classification system beginning July 1, 1989. The amounts in item 1 may be expended in either year of the biennium upon review and approval by the commissioner of higher education.

The commissioner of higher education may transfer county millage collections among centers. Millage received by the centers from the 1.5-mill levy that in the aggregate exceeds $787,000 in fiscal 1990 and $796,000 in fiscal 1991 must cause a general fund reversion of a like amount each year. Any voted millage funds available for the vocational-technical centers are appropriated.

BUREAU OF MINES

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Research | 1,254,014 | 53,000 | 1,307,014 | 1,275,109 | 53,000 | 1,328,109 |
| 2. Poplar River Monitoring | 18,000 | | 18,000 | | | |
| Total | 1,272,014 | 53,000 | 1,325,014 | 1,275,109 | 53,000 | 1,328,109 |

Item 2 is a biennial appropriation.

AGRICULTURAL EXPERIMENT STATION

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Agricultural Experiment Station | 6,509,679 | 2,031,135 | 8,540,814 | 6,727,832 | 2,031,135 | 8,758,967 |
| 2. Spring Wheat Breeding | 170,000 | | 170,000 | | | |
| 3. U.S. Range Laboratory | | 390,104 | 390,104 | | 389,395 | 389,395 |
| Total | 6,679,679 | 2,421,239 | 9,100,918 | 6,727,832 | 2,420,530 | 9,148,362 |

Item 2 is a biennial appropriation.

COOPERATIVE EXTENSION SERVICE

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Public Service | 2,268,712 | 1,946,508 | 4,215,220 | 2,452,445 | 1,946,508 | 4,398,953 |
| 2. Ground Water Protection Workshops | 14,967 | 8,000 | 22,967 | 14,967 | 15,000 | 29,967 |
| Total | 2,283,679 | 1,954,508 | 4,238,187 | 2,467,412 | 1,961,508 | 4,428,920 |

The cooperative extension service shall revert $1 of general fund for each $1 that federal Smith-Lever funds in item 1 exceeds $1,946,508 in fiscal 1990 and $1,946,508 in fiscal 1991.

FOREST AND CONSERVATION EXPERIMENT STATION

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| | Fiscal 1990 | | | Fiscal 1991 | | |
|---|---|---|---|---|---|---|
| | General Fund | Current Unrestricted | Total | General Fund | Current Unrestricted | Total |
| 1. Research | 654,455 | | 654,455 | 667,253 | | 667,253 |
| MONTANA STATE UNIVERSITY | | | | | | |
| 1. Instruction | | | | | | |
| a. Operations | 24,735,156 | 944,535 | 25,679,691 | 26,829,594 | 661,124 | 27,490,718 |
| b. Architecture/Interior Design | | 96,150 | 96,150 | | 96,150 | 96,150 |
| 2. Research | | 597,759 | 597,759 | | 597,963 | 597,963 |
| 3. Public Service | | 10,749 | 10,749 | | 10,752 | 10,752 |
| 4. Academic Support, Student Services, and Institutional Support | | 13,171,640 | 13,171,640 | 265,328 | 13,342,208 | 13,607,536 |
| 5. Audit | 47,042 | | 47,042 | | | |
| 6. Operation and Maintenance of Physical Plant | 4,159,454 | 1,563,345 | 5,722,799 | 5,149,756 | 801,955 | 5,951,711 |
| 7. New Space | 50,000 | | 50,000 | | | |
| 8. Scholarships and Fellowships | | 1,188,665 | 1,188,665 | | 1,188,665 | 1,188,665 |
| Total | 28,991,652 | 17,572,843 | 46,564,495 | 32,244,678 | 16,698,817 | 48,943,495 |

Total audit costs are estimated to be $94,083 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 8.

Item 7 is a biennial appropriation.

| | | | | | | |
|---|---|---|---|---|---|---|
| UNIVERSITY OF MONTANA | | | | | | |
| 1. Instruction | | | | | | |
| a. Operations | 18,555,351 | 1,149,162 | 19,704,513 | 19,902,854 | 1,232,201 | 21,135,055 |
| b. Law/Pharmacy/Physical Therapy | | 398,700 | 398,700 | | 398,700 | 398,700 |
| 2. MBA Program | 260,000 | | 260,000 | | | |
| 3. Pharmacy Accreditation | 25,000 | | 25,000 | 25,000 | | 25,000 |
| 4. Research | | 536,137 | 536,137 | | 536,582 | 536,582 |
| 5. Public Service | | 183,132 | 183,132 | | 183,288 | 183,288 |
| 6. Academic Support, Student Services, and Institutional Support | | 10,684,143 | 10,684,143 | 217,252 | 10,831,563 | 11,048,815 |
| 7. Audit | 47,042 | | 47,042 | | | |
| 8. Operation and Maintenance of Physical Plant | 3,796,207 | 1,479,255 | 5,275,462 | 4,728,409 | 758,072 | 5,486,481 |
| 9. New Space | 225,000 | | 225,000 | | | |
| 10. Scholarships and Fellowships | | 1,077,497 | 1,077,497 | | 1,077,497 | 1,077,497 |
| Total | 22,908,600 | 15,508,026 | 38,416,626 | 24,873,515 | 15,017,903 | 39,891,418 |

Total audit costs are estimated to be $94,083 for the biennium. Fifty percent of these costs are to be paid from funds other than those appropriated in items 1 through 10.

Items 2 and 9 are biennial appropriations.

Up to $25,000 per year of current restricted private donations for the pharmacy program accreditation are appropriated.

| | | | | | | |
|---|---|---|---|---|---|---|
| EASTERN MONTANA COLLEGE | | | | | | |
| 1. Instruction | 6,889,638 | | 6,889,638 | 7,311,399 | | 7,311,399 |
| 2. Public Service | | 246,653 | 246,653 | | 249,869 | 249,869 |
| 3. Academic Support, Student Services, and Institutional Support | 493,756 | 4,348,068 | 4,841,824 | 299,910 | 4,597,948 | 4,897,858 |
| 4. Audit | 45,658 | | 45,658 | | | |

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| | Fiscal 1990 | | | Fiscal 1991 | | |
|---|---|---|---|---|---|---|
| | General Fund | Current Unrestricted | Total | General Fund | Current Unrestricted | Total |
| 5. Operation and Maintenance of Physical Plant | 1,516,250 | 591,328 | 2,107,578 | 1,896,360 | 295,521 | 2,191,881 |
| 6. New Space | 20,000 | | 20,000 | | | |
| 7. Scholarships and Fellowships | | 358,606 | 358,606 | | 358,606 | 358,606 |
| Total | 8,965,302 | 5,544,655 | 14,509,957 | 9,507,669 | 5,501,944 | 15,009,613 |

Total audit costs are estimated to be $60,877 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

Item 6 is a biennial appropriation.

NORTHERN MONTANA COLLEGE

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Instruction | 3,989,888 | 200,000 | 4,189,888 | 4,216,100 | | 4,216,100 |
| 2. Transition Funding | 300,000 | | 300,000 | | | |
| 3. Public Service | | 8,891 | 8,891 | | 8,891 | 8,891 |
| 4. Academic Support, Student Services, and Institutional Support | 426,375 | 1,963,040 | 2,389,415 | 284,738 | 2,117,724 | 2,402,462 |
| 5. Audit | 38,394 | | 38,394 | | | |
| 6. Operation and Maintenance of Physical Plant | 802,812 | 316,609 | 1,119,421 | 1,008,311 | 155,886 | 1,164,197 |
| 7. Scholarships and Fellowships | | 314,000 | 314,000 | | 314,000 | 314,000 |
| Total | 5,557,469 | 2,802,540 | 8,360,009 | 5,509,149 | 2,596,501 | 8,105,650 |

Total audit costs are estimated to be $51,192 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 7.

Item 2 is a biennial appropriation.

WESTERN MONTANA COLLEGE

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Instruction | 2,187,559 | 50,334 | 2,237,893 | 2,298,465 | | 2,298,465 |
| 2. Transition Funding | 125,000 | | 125,000 | | | |
| 3. Academic Support, Student Services, and Institutional Support | 261,228 | 1,112,154 | 1,373,382 | 183,427 | 1,221,525 | 1,404,952 |
| 4. Audit | 38,394 | | 38,394 | | | |
| 5. Operation and Maintenance of Physical Plant | 542,176 | 219,425 | 761,601 | 685,853 | 106,212 | 792,065 |
| 6. Scholarships and Fellowships | | 107,889 | 107,889 | | 107,889 | 107,889 |
| Total | 3,154,357 | 1,489,802 | 4,644,159 | 3,167,745 | 1,435,626 | 4,603,371 |

Total audit costs are estimated to be $51,192 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

Item 2 is a biennial appropriation.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Instruction | 4,447,218 | | 4,447,218 | 4,879,550 | | 4,879,550 |
| 2. Research | | 50,262 | 50,262 | | 50,351 | 50,351 |
| 3. Academic Support, Student Services, and Institutional Support | 599,838 | 2,119,056 | 2,718,894 | 530,170 | 2,291,294 | 2,821,464 |
| 4. Audit | 45,658 | | 45,658 | | | |
| 5. Operation and Maintenance of Physical Plant | 1,062,941 | 416,830 | 1,479,771 | 1,332,895 | 206,067 | 1,538,962 |
| 6. Scholarships and Fellowships | | 285,255 | 285,255 | | 285,255 | 285,255 |
| Total | | | | | | |

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| | Fiscal 1990 | | | Fiscal 1991 | | |
|---|---|---|---|---|---|---|
| | General Fund | Current Unrestricted | Total | General Fund | Current Unrestricted | Total |
| | 6,155,655 | 2,871,403 | 9,027,058 | 6,742,615 | 2,832,967 | 9,575,582 |

Total audit costs are estimated to be $60,877 for the biennium. Twenty-five percent of these costs are to be paid from funds other than those appropriated in items 1 through 6.

| | Fiscal 1990 | | | | | Fiscal 1991 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total | General Fund | State Special Revenue | Federal Special Revenue | Proprietary | Total |
| TOTAL SECTION F | | | | | | | | | | |
| | 103,440,602 | 53,750,560 | 6,981,494 | 10,346,772 | 174,519,428 | 109,950,105 | 52,060,340 | 6,752,051 | 11,778,933 | 180,541,429 |
| TOTAL STATE FUNDING | | | | | | | | | | |
| | 391,731,577 | 329,137,257 | 461,721,406 | 83,049,337 | 1,265,639,577 | 404,604,959 | 309,127,264 | 460,102,353 | 83,895,185 | 1,257,729,761 |

NOTE: The total of state special revenues for section F includes the following amounts of current unrestricted funds:

Fiscal 1990 ——— $53,750,560

Fiscal 1991 ——— $52,060,340

Approved April 26, 1989.

# HOUSE BILL NO. 301

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1989; AMENDING SECTION 17, HOUSE BILL NO. 2, LAWS OF 1987; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Time limits.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. The unspent balance of any appropriation must revert to the fund from which it was appropriated unless the appropriation is continued by this act.

Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the governor may reduce any appropriation in this act by not more than 15%.

Section 3. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 4. **Appropriations.** The following money is appropriated, subject to the terms and conditions of this act:

| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| DEPARTMENT OF STATE LANDS | | | |
| Forestry | 1989 | $12,639,542 | General Fund |

| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES | | | |
| General Assistance | 1989 | 1,157,280 | General Fund |
| Medical Assistance | 1989 | 1,359,105 | General Fund |
| MONTANA UNIVERSITY SYSTEM | | | |
| Board of Regents — Travel | 1989 | 10,000 | General Fund |
| Out-of-State Tuition | 1989 | 512,089 | General Fund |
| Montana college of mineral science and technology | 1989 | 48,330 | General Fund |
| Vo-Techs | 1989 | 34,888 | General Fund |
| STATE AUDITOR | | | |
| Equipment | 1989 | 19,115 | General Fund |
| MONTANA STATE LIBRARY | | | |
| Grounds Maintenance | 1989 | 7,100 | General Fund |
| Payout and Recruitment | 1989 | 10,100 | General Fund |
| OFFICE OF PUBLIC INSTRUCTION | | | |
| Foundation Lawsuit | 1989 | 82,120 | General Fund |
| Transportation Aid | 1989 | 215,000 | General Fund |
| Severance Pay — Personal Staff | 1989 | 28,154 | General Fund |
| Severance Pay — Personal Staff | 1989 | 2,873 | State Special |
| Severance Pay — Personal Staff | 1989 | 8,499 | Federal Special |
| Rock Spring School District No. 2, Rosebud County | 1989 | 8,063 | State Special |

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| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| DEPARTMENT OF REVENUE | | | |
| Child Enforcement | 1989 | 63,040 | Federal Special |
| DEPARTMENT OF AGRICULTURE | | | |
| Environmental Management | 1989 | 17,060 | General Fund |
| DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES | | | |
| Certification Requirement | 1989 | 145,399 | Federal Special |
| DEPARTMENT OF INSTITUTIONS | | | |
| Montana Developmental Center | 1989 | 294,666 | General Fund |
| Montana State Hospital | 1989 | 42,076 | Proprietary |
| Montana State Prison | 1989 | 181,616 | Proprietary |
| Corrections Medical | 1989 | 48,700 | General Fund |
| DEPARTMENT OF JUSTICE | | | |
| Defense of Open-Meeting Litigation | | 12,000 | General Fund |
| County Attorney Payroll | 1989 | 25,000 | General Fund |
| Law Enforcement Academy | 1989 | 93,316 | General Fund |
| Transportation of Prisoners | 1989 | 60,000 | General Fund |
| Highway Patrol Prisoner P/Diem | 1989 | 100,000 | State Special |
| Highway Patrol Workers' Comp | 1989 | 102,000 | State Special |
| Severance Pay — Personal Staff | 1989 | 19,095 | General Fund |
| MONTANA SUPREME COURT | | | |
| Operations | 1989 | 8,500 | General Fund |
| Clerk of Supreme Court | 1989 | 8,450 | General Fund |

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| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| Severance Pay — Personal Staff | 1989 | 6,667 | General Fund |
| **DEPARTMENT OF LIVESTOCK** | | | |
| Diagnostic Lab | 1989 | 28,449 | General Fund |
| Diagnostic Lab | 1989 | 35,196 | State Special |
| Meat Inspection | 1989 | 19,868 | General Fund |
| Meat Inspection | 1989 | 19,868 | Federal Special |
| **SECRETARY OF STATE** | | | |
| Legal Costs | 1989 | 35,000 | General Fund |
| Severance Pay for Employees | 1989 | 14,702 | General Fund |
| Severance Pay — Personal Staff | 1989 | 684 | General Fund |
| Severance Pay — Personal Staff | 1989 | 5,683 | State Special |
| **GOVERNOR'S OFFICE** | | | |
| Severance Pay — Personal Staff | 1989 | 63,299 | General Fund |
| Severance Pay — Personal Staff | 1989 | 28,838 | Federal Special |
| **DEPARTMENT OF MILITARY AFFAIRS** | | | |
| Severance Pay — DES Division | 1989 | 5,490 | General Fund |
| Severance Pay — DES Division | 1989 | 5,490 | Federal Special |
| Firefighters Lawsuit — Legal Costs | 1989 | 148,872 | General Fund |
| Firefighters Lawsuit — Settlement | 1989 | 538,398 | Federal Special |

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| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| DEPARTMENT OF COMMERCE | | | |
| Transportation Division | 1989 | 73,000 | General Fund |
| Term. Pay — Coord. of Indian Affairs | 1989 | 5,200 | General Fund |
| DEPARTMENT OF FAMILY SERVICES | | | |
| Foster Care | 1989 | 990,864 | Federal Special |
| Day Care | 1989 | 137,432 | Federal Special |
| Subsidized Adoption | 1989 | 68,157 | Federal Special |
| STATEWIDE TOTAL | | | |
| General Fund | 1989 | $17,057,841 | |
| State Special Revenue | 1989 | 253,815 | |
| Proprietary | 1989 | 223,692 | |
| Federal Special Revenue | 1989 | 2,005,985 | |
| Total | | $19,541,333 | |

Section 5. Section 17, House Bill No. 2, Laws of 1987, the narrative to appropriations to the Department of Social and Rehabilitation Services, on page 1912, Session Laws of Montana, 1987, is amended to read:

"~~Transfer of funds may be made among items 1bii, 5bi, 5bv, and 5bvi. No funds may be transferred from these items to any other portion of the SRS budget.~~"

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved May 12, 1989.

# HOUSE BILL NO. 320

AN ACT APPROPRIATING MONEY TO THE SUPREME COURT FOR IMPROVEMENT FUNDING.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** The following amounts are appropriated from the general fund to the supreme court to provide improvement funding for the operation of Montana's court system:

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| | FY 1990 | FY 1991 |
|---|---|---|
| Supreme Court Operations Program | $131,104 | $72,058 |

Section 2. **Purpose.** The appropriation in [section 1] is intended to provide:

(1) hardware and software for a computerization pilot project in district courts;

(2) two FTE systems analysts (plus associated equipment, travel, and supply expenses) in the office of the court administrator to begin development of uniform software packages and computer training for district courts and courts of limited jurisdiction;

(3) funding for six meetings a year of the commission on appropriate technology.

Section 3. **Review by department of administration.** The department of administration shall review and approve all system specifications and acquisitions proposed by the supreme court, as required in 2-17-501.

Approved May 18, 1989.

# HOUSE BILL NO. 329

AN ACT TO APPROPRIATE FUNDS FROM EITHER THE RESOURCE INDEMNITY TRUST RECLAMATION AND DEVELOPMENT GRANTS SPECIAL REVENUE ACCOUNT OR THE RESOURCE INDEMNITY TRUST WATER DEVELOPMENT SPECIAL REVENUE ACCOUNT TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO BE AWARDED TO THE BUTTE-SILVER BOW CITY-COUNTY GOVERNMENT FOR HIRING AN UPPER CLARK FORK RIVER BASIN COORDINATOR.

WHEREAS, the assessment, management, and rehabilitation of the water and aquatic resources of the Upper Clark Fork River Basin is a major public policy concern of the state of Montana; and

WHEREAS, regulatory and administrative responsibility for the resources of the Upper Clark Fork River Basin rests with a large and diverse array of state, federal, and local government agencies; and

WHEREAS, there are four federal Superfund sites in the Upper Clark Fork River Basin that are in various stages of investigation and cleanup and several high priority problem areas within these sites that are currently being or will be addressed during the next 2 years, including the Berkeley Pit and Travona Mine flooding, Warm Springs ponds, mine waste deposits on floodplains, soil contamination in the vicinity of Butte, Walkerville, and the Anaconda Old Works, Anaconda flue dust, and a variety of activities at Mill Creek, Montana Pole, and Rocker; and

WHEREAS, the environmental problems at these locations pose significant threats to ground water and surface water and the health of the area's citizens; and

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WHEREAS, the rehabilitation of the water and aquatic resources of the Upper Clark Fork River Basin is a matter of significant short- and long-term economic and social importance to basin residents and citizens of Montana; and

WHEREAS, the investigation and cleanup activities being undertaken by the U.S. Environmental Protection Agency and other agencies often involve large volumes of complex technical data; and

WHEREAS, the interagency coordination, information assessment, and public involvement functions that have been supplied by the Governor's Office through the Clark Fork Basin Project are scheduled to be phased out by fiscal year 1991.

THEREFORE, the Legislature of the state of Montana finds it appropriate to allocate funds to enable affected local governments to effectively participate in ongoing projects and activities affecting the water and aquatic resources of the Upper Clark Fork River Basin.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation for upper Clark Fork River basin coordinator.** (1) There is appropriated $100,000 from either the reclamation and development grants special revenue account or the water development special revenue account to the department of natural resources and conservation for the biennium ending June 30, 1991. The appropriation must be awarded by the department as a pass-through grant to the Butte-Silver Bow city-county government for the purpose of hiring an upper Clark Fork River basin issues and technical information coordinator. The department shall award this grant from any funds available after funding the projects and activities ranked to receive funding from the resource indemnity trust grants program and the water development program for the biennium ending June 30, 1991.

Section 2. **Expenditure of funds.** The funds appropriated by [section 1] must be expended by the Butte-Silver Bow city-county government for the purpose of hiring an upper Clark Fork River basin issues and technical information coordinator who shall:

(1) provide policy, procedural, and technical information, as appropriate, to local government officials and citizens of the upper Clark Fork River basin to enable them to effectively participate in decisions concerning the assessment, management, and rehabilitation of the water and aquatic resources of the basin;

(2) evaluate technical assessments prepared by state and federal agencies for purposes of determining environmental problems related to contaminated soils and water, potential health risks for citizens of the basin, and preferred options for accomplishing rehabilitation; and

(3) participate in meetings and other activities with state and federal agency personnel and other parties concerning the management and rehabilitation of the basin's water and aquatic resources.

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Section 3. **Conditions of grant.** The money appropriated by [section 1] is subject to the following conditions that must be fulfilled by the grant recipient:

(1) A scope of work and budget must be submitted to and approved by the department of natural resources and conservation. However, a reduction in a scope of work or budget may not affect priority activities.

(2) Other funds required for fulfilling the purposes of the grant, if any, must have been committed, and the commitment must be documented.

(3) The grant recipient shall show satisfactory progress in accomplishing the purposes of the grant as listed in [section 2] and in the approved scope of work.

(4) An agreement between the department of natural resources and conservation and the grant recipient must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements must be accomplished as considered necessary by the department of natural resources and conservation to accomplish the purposes of the grant as listed in [section 2].

Approved May 22, 1989.

# HOUSE BILL NO. 619

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1989, THAT WOULD USUALLY BE MADE BY BUDGET AMENDMENT; PROVIDING FOR SOME APPROPRIATIONS TO CONTINUE FROM FISCAL YEAR 1989 TO FISCAL YEAR 1990; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Time limits.** The appropriations contained in [this act] are intended to provide only necessary and ordinary expenditures for the years for which the appropriations are made. The unspent balance of any appropriation must revert to the fund from which it was appropriated unless the appropriation is continued by [this act].

Section 2. **Governor's power to reduce appropriations.** In the event of a shortfall in revenue, the governor may reduce any appropriation in [this act] by not more than 15%.

Section 3. **Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 4. **Appropriations.** The following money is appropriated, subject to the terms and conditions of [this act]:

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| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| **A. GENERAL GOVERNMENT** | | | |
| DEPARTMENT OF JUSTICE | | | |
| Identification Bureau | | | |
| Missing Children | 1989 | $ 10,812 | Federal Special |

The unexpended fiscal year 1989 missing children grant authority is reappropriated for fiscal year 1990.

| | | | |
|---|---|---|---|
| DEPARTMENT OF ADMINISTRATION | | | |
| Publications and Graphics | 1989 | 800,000 | Proprietary |
| Tort Claims | 1989 | 988,000 | Proprietary |
| Teachers' Retirement Board | 1989 | 5,100 | Pension Trust |
| DEPARTMENT OF HIGHWAYS | | | |
| Internal Service | | | |
| Motor Overhaul | 1989 | 114,866 | Proprietary |
| Preconstruction | | | |
| Project Development | 1989 | 2,112,273 | Federal Special |
| Project Development | 1989 | 528,068 | State Special |
| Construction | | | |
| Project Construction | 1989 | 782,048 | Federal Special |
| Project Construction | 1989 | 195,513 | State Special |
| Maintenance | | | |
| Winter Maintenance | 1989 | 1,500,000 | State Special |
| Motor Pool | | | |
| Equipment | 1989 | 246,476 | Proprietary |

The department is authorized to provide an interentity loan from the highway earmarked revenue account in the state special revenue fund to the motor pool internal service account in the proprietary fund. This interentity loan authorization is effective upon passage and must be repaid to the highway earmarked revenue account no later than June 30, 1993.

| | | | |
|---|---|---|---|
| **B. NATURAL RESOURCES** | | | |
| DEPARTMENT OF STATE LANDS | | | |
| Reclamation | | | |
| Bond Forfeitures | 1989 | 36,000 | State Special |
| Bond Forfeitures | 1989 | 1,500 | State Special |
| Bond Forfeitures | 1989 | 34,928 | State Special |
| Bond Forfeitures | 1989 | 2,000 | State Special |
| Forestry Division | | | |
| Pass-Through | 1989 | 85,000 | Federal Special |

Up to $146,000 of the unexpended fiscal year 1989 authority for bond forfeitures is reappropriated for fiscal year 1990.

| | | | |
|---|---|---|---|
| DEPARTMENT OF COMMERCE | | | |
| Aeronautics | | | |
| Federal Aviation Grant | 1989 | 81,000 | Federal Special |

The unexpended fiscal year 1989 federal aviation administration grant authority is reappropriated for fiscal year 1990.

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| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| Housing Assistance | | | |
| Low-income Housing Assistance | 1989 | 2,660,600 | Federal Special |
| Transportation | | | |
| Transportation Grants | 1989 | 400,000 | Federal Special |
| Transportation/UMTA | 1989 | 50,000 | Federal Special |

The unexpended fiscal year 1989 federal UMTA grant authority is reappropriated for fiscal year 1990.

The unexpended fiscal year 1989 transportation grants authority is reappropriated for fiscal year 1990.

DEPARTMENT OF AGRICULTURE
Agricultural Development

The unexpended fiscal year 1989 ag marketing federal grant authority is reappropriated for fiscal year 1990.

## C. INSTITUTIONS AND CULTURAL AGENCIES

| | | | |
|---|---|---|---|
| DEPARTMENT OF INSTITUTIONS | | | |
| Montana State Prison | | | |
| Prison Industries | 1989 | 135,125 | Proprietary |
| Prison Ranch | 1989 | 82,224 | Proprietary |
| Care and Custody | 1990 | 27,500 | Federal Special |
| MONTANA STATE LIBRARY | | | |
| State Library | | | |
| Operations | 1990 | 3,875 | Federal Special |
| Operations | 1990 | 1,400 | Federal Special |
| MONTANA ARTS COUNCIL | | | |
| Promotion of the Arts | 1989 | 44,573 | Federal Special |

The unexpended fiscal year 1989 national endowment for the arts grant is reappropriated for fiscal year 1990.

## D. HUMAN SERVICES

| | | | |
|---|---|---|---|
| DEPARTMENT OF LABOR AND INDUSTRY | | | |
| Job Training Partnership Act | | | |
| Dislocated Farmer | 1989 | 180,000 | Federal Special |

The unexpended fiscal year 1989 dislocated farmer grant authority is reappropriated for fiscal year 1990.

| | | | |
|---|---|---|---|
| Employment Policy Division | | | |
| Wage Surveys | 1989 | 29,500 | Federal Special |
| DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES | | | |
| Family/Maternal Child Health Bureau | | | |
| Child Nutrition | 1989 | 813,234 | Federal Special |

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| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| Women, Infants and Children | 1989 | 660,786 | Federal Special |
| Preventive Health Bureau | | | |
| Disabilities Prevention Project | 1989 | 34,541 | Federal Special |

The unexpended fiscal year 1989 disabilities prevention project grant authority is reappropriated for fiscal year 1990.

| | | | |
|---|---|---|---|
| Solid and Hazardous Waste Bureau | | | |
| Hazardous Waste Information | 1989 | 10,000 | Federal Special |
| Centralized Services Division | | | |
| Support Services | 1989 | 22,484 | Federal Special |
| Social Security Contract | 1989 | 15,600 | Federal Special |
| Director | | | |
| Operations | 1989 | 300,000 | State Special |
| Operations | 1989 | 13,532 | Federal Special |
| DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES | | | |
| Assistance Payments | | | |
| Emergency Shelter Grant | 1989 | 245,000 | Federal Special |
| Operations | 1989 | 23,875 | Federal Special |
| WIN Demo | 1989 | 206,364 | Federal Special |
| Vocational Rehabilitation | | | |
| Section 110 | 1989 | 725,000 | Federal Special |
| Supported Employment | 1989 | 193,958 | Federal Special |
| Developmental Disabilities Division | | | |
| Chapter 1 Grant | 1989 | 78,569 | Federal Special |
| Montana Youth Initiative | 1989 | 107,500 | Federal Special |
| Training Grant | 1989 | 6,254 | Federal Special |
| DEPARTMENT OF FAMILY SERVICES | | | |
| Refugee | 1989 | 127,422 | Federal Special |

The unexpended fiscal year 1989 refugee grant authority is reappropriated for fiscal year 1990.

## E. EDUCATION

| | | | |
|---|---|---|---|
| COMMISSIONER OF HIGHER EDUCATION | | | |
| Talent Search | 1989 | 1,891 | Federal Special |
| SHEEO Grant | 1989 | 15,000 | Other Special |
| MONTANA UNIVERSITY SYSTEM | | | |
| Great Falls Vo-Tech | 1989 | 111,148 | Current Unrestricted |
| Eastern Montana College | 1989 | 225,200 | Current Unrestricted |
| Western Montana College | 1989 | 68,808 | Current Unrestricted |
| Agricultural Experiment Station | 1989 | 175,515 | Current Unrestricted |

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| Agency and Program | FY | Amount | Fund |
|---|---|---|---|
| STATEWIDE TOTAL | | 2,366,691 | Proprietary |
| | | 2,598,009 | State Special |
| | | 9,754,591 | Federal Special |
| | | 600,771 | Other |
| Total | | $15,320,062 | |
| OFFICE OF PUBLIC INSTRUCTION | | | |
| EESA Title II Grant | 1989 | 100,000 | Federal Special |
| Melon Grant | 1989 | 28,817 | Federal Special |
| AIDS Grant | 1989 | 128,000 | Federal Special |
| EHA-D Grant | 1989 | 30,000 | Federal Special |
| Carl Perkins — Vo Ed | 1989 | 400,000 | Federal Special |
| Indirect Costs on: | | | |
| EESA Title II | 1989 | 2,800 | State Special |
| AIDS Grant | 1989 | 17,284 | State Special |
| EHA-D | 1989 | 5,510 | State Special |

The unexpended fiscal year 1989 AIDS, EESA Title II, Melon, and EHA-D grant authority is reappropriated for fiscal year 1990.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved May 5, 1989.

# HOUSE BILL NO. 709

AN ACT APPROPRIATING MONEY DURING THE BIENNIUM ENDING JUNE 30, 1991, FROM THE LOCAL IMPACT ACCOUNT TO THE DEPARTMENT OF HIGHWAYS TO MATCH FUNDS FROM BIG HORN COUNTY TO FINANCE COMPLETION OF MONTANA HIGHWAY 314; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Coal Tax Oversight Subcommittee, in a resolution adopted September 21, 1988, urged the 51st Legislature to support a request from the County Commissioners of Big Horn County for the allocation of $2.8 million from money appropriated to the Coal Board to be used to match an approximately equal amount provided by Big Horn County, with the total amount to be used for expeditious completion of Montana Highway 314 between Decker and Busby, Montana.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** There is appropriated during the biennium ending June 30, 1991, from the local impact account in the state special revenue fund to the department of highways $2.8 million to be used to

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match funds provided by Big Horn County to complete the construction of 14 miles of Montana Highway 314 between Decker and Busby, Montana.

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved April 20, 1989.

# HOUSE BILL NO. 768

AN ACT TO APPROPRIATE MONEY FROM THE GENERAL FUND TO MONTANA STATE UNIVERSITY TO SUPPORT THE STAFF AND OPERATIONS FOR THE EXPANDED FACILITIES OF THE MUSEUM OF THE ROCKIES.

WHEREAS, the Museum of the Rockies has been operating with a combination of public and private support since 1977; and

WHEREAS, the Museum of the Rockies received planning money from the Legislature in 1981 and construction authority for a new addition in 1985; and

WHEREAS, the Museum of the Rockies has recently completed the new addition that will triple the museum's size; and

WHEREAS, 25,000 public school children and 1,200 teachers throughout Montana, as well as students enrolled in Montana's public and private colleges and universities, will benefit from the many and varied educational programs offered by the museum; and

WHEREAS, this exciting new facility will attract up to 250,000 people a year and provide a significant boost to the state's tourism effort and economy; and

WHEREAS, the museum has fulfilled its commitment to pursue private funds for both the construction and operation of the addition by raising over $6 million.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** (1) There is appropriated to Montana state university from the general fund $262,201 for the fiscal year beginning July 1, 1989, and ~~$269,040~~ for the fiscal year beginning July 1, 1990, to support the staff and operations for the recently expanded facilities of the museum of the Rockies.

(2) It is the intent of the legislature that the appropriation authorized in [this act] may not be used as a part of the budget base at Montana state university for fiscal years following fiscal year 1990.

Approved April 28, 1989.

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# HOUSE BILL NO. 775

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS AND GRANTS UNDER THE WATER DEVELOPMENT PROGRAM AND THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM; TO AUTHORIZE LOANS FROM WATER DEVELOPMENT BOND PROCEEDS AND APPROPRIATE FUNDS FOR DEBT SERVICE; TO REAUTHORIZE GRANTS AND LOANS APPROVED BY THE 50TH LEGISLATURE; TO REALLOCATE CERTAIN RESOURCE INDEMNITY TRUST ACCOUNT INTEREST INCOME FOR WATER DEVELOPMENT PROGRAM GRANTS DURING THE BIENNIUM ENDING JUNE 30, 1991; TO PLACE CERTAIN CONDITIONS UPON GRANTS AND LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriations from the water development state special revenue account.** (1) Because the legislature cannot appropriate individual grants to private entities, there is appropriated to the department of natural resources and conservation up to $85,000 from the water development state special revenue account during the 1990-91 biennium for grants to private persons for water development projects and activities pursuant to the provisions of Title 85, chapter 1, part 6. This appropriation is from money available in the water development state special revenue account for grants for water development projects and activities under 85-1-604(3)(c) and according to priorities established in subsections (3) and (4) of this section.

(2) There are appropriated to the department the interest earnings from the proceeds of water development bonds and renewable resource development bonds issued to finance loans authorized by [this act]. Interest earnings must be deposited in the water development debt service fund and the renewable resource development debt service fund, respectively.

(3) There are appropriated to the department all other funds not appropriated under subsection (1) and available for grants to political subdivisions and local government entities from the water development state special revenue account during the 1990-91 biennium. This appropriation is from money available in the water development state special revenue account and renewable resource development account for grants and from the water development or renewable resource accounts for loans for water development projects and activities under 85-1-604(3)(c) and [this act]. The funds appropriated in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (4), subject to the conditions set forth in [this act] and the contingencies described in the renewable resource and water development programs January 1989 report. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (4), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in

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order of priority until available funds are expended. Funds not accepted or used by higher ranked projects and activities must be provided for projects and activities further down the priority list that would not otherwise receive funding. If the total expenditure of funds appropriated under this section results in a cutoff that ends at a point at which more than one project or activity is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the department with the advice of the water development advisory committee formed pursuant to 2-15-122. Any projects that are funded by the reclamation and development grants program may not be funded under [this act]. Actual rank and score of the various projects and activities are contained within the renewable resource and water development programs project evaluations and recommendations report for the 1990-91 biennium.

(4) The following are the grant and loan prioritized projects and activities:

WATER DEVELOPMENT PROGRAM

| Applicant/Project | Recommended Grant |
|---|---|
| DALY DITCH IRRIGATION DISTRICT<br>Republican West Diversion Replacement | $100,000 |
| PRIVATE APPLICANT<br>Water System Technical Adviser | 60,000 |
| BEAVERHEAD AND MILE HIGH CONSERVATION DISTRICT<br>Big Hole River Channel Stabilization | 18,400 |
| PRAIRIE COUNTY CONSERVATION DISTRICT<br>Watershed Demonstration Management Practices | 65,000 |
| CARBON CONSERVATION DISTRICT<br>Rushwater Creek Erosion Control | 100,000 |
| PRIVATE APPLICANT<br>Wastewater Pond Effluent Irrigation System | 25,000 |
| CARBON CONSERVATION DISTRICT<br>Rock Creek Decreed Water Distribution | 30,000 |
| HUNTLEY PROJECT IRRIGATION DISTRICT<br>Main Canal Measuring and Flow Control | 44,268 |
| DUTTON, TOWN OF<br>Streambank Stabilization Project | 24,500 |
| POPLAR, TOWN OF<br>Water Treatment Facility | 50,000 |
| PARK CONSERVATION DISTRICT<br>Park Branch Sediment Diversion | 30,000 |
| SHERIDAN COUNTY | |

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| | |
|---|---|
| Carroll Dam Feasibility Study | 84,500 |

Section 2. **Appropriations under renewable resource development program — eligibility.** (1) There are appropriated to the department of natural resources and conservation all available funds from the renewable resource development account during the 1990-91 biennium for projects under the renewable resource development program.

(2) The department shall award grants to the named entities for the described purposes and in the described amounts set out in subsection (3)(a). The legislature, pursuant to 90-2-111, approves the listed grants, with grants to be made in order of priority ranking, except renewable resource development grants for water development projects and activities that must be made in the order of priority listed in [section 1]. Projects and activities sponsored by public entities listed in [section 1] that do not receive water development funding are eligible for renewable resource development funds on the basis of the renewable resource development program priority ranking criteria. Any project or activity listed in [section 1] that receives water development funds is not eligible to compete for renewable resource development funds. Projects and activities listed in this section that do not receive renewable resource development funding are eligible for water development funds on the basis of the water development program priority ranking criteria. A project or activity listed in this section that receives renewable resource development funds is not eligible to compete for water development funds. Funds not accepted or used by higher ranked projects must be provided for projects further down the priority list that would not otherwise receive funding. If the total expenditure of funds appropriated under this section results in a cutoff that ends at a point at which more than one project is ranked equal in priority, the decision regarding which project or projects will receive funding must be made by the department with the advice of the water development advisory committee formed pursuant to 2-15-122. Actual rank and score of the various projects are contained within the renewable resource and water development programs project evaluations and recommendations report for the 1990-91 biennium.

(3) (a) The following are the grant and loan prioritized projects and activities:

RENEWABLE RESOURCE DEVELOPMENT PROGRAM

| Applicant/Project | Recommended Funding Grant | Loan |
|---|---|---|
| GALLATIN CONSERVATION DISTRICT | | |
| East Gallatin State Recreation Area | $100,000 | |
| FLATHEAD BASIN COMMISSION | | |
| Forest Practices/Water Quality Cooperative Program | 25,000 | |
| MONTANA STATE LIBRARY | | |
| Montana National Resource Information System | 99,806 | |

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| | | |
|---|---|---|
| Montana Water Information System | 45,510 | |
| Montana Natural Heritage Program | 99,450 | |
| UNIVERSITY OF MONTANA | | |
| Management Guidelines/Riparian Site | 41,773 | |
| AGRICULTURE, DEPARTMENT OF | | |
| Monitor Agricultural Chemicals in Ground Water | 93,550 | |
| LEWIS AND CLARK COUNTY | | |
| Hydrogeologic Evaluation/Helena Valley | 100,000 | |
| BELGRADE, CITY OF | | |
| Meter Installation and Water Main Replacement | 50,000 | 150,000 |
| HYSHAM, TOWN OF | | |
| Hysham Water System Improvement Project | 50,000 | 150,000 |
| WHITEFISH WATER AND SEWER | | |
| Swift Creek Clay Banks Stabilization | 73,440 | |
| EAST GLACIER WATER AND SEWER DISTRICT | | |
| Midvale Creek Diversion | 40,000 | 76,380 |
| YELLOWSTONE COUNTY | | |
| Valley Creek/Calamity Jane Study | 10,000 | |
| STATE LANDS, DEPARTMENT OF | | |
| Integrated Forest Resource Information | 89,121 | |
| COLUMBIA FALLS, CITY OF | | |
| Water Master Plan Phase II | 20,000 | |
| MISSOULA COUNTY | | |
| Emergency Response/Aquifer Protection Enhancement | 45,000 | |
| MSU-EASTERN AGRICULTURAL RESEARCH CENTER | | |
| Ground Water Nitrates Under Irrigable Agricultural Land | 10,700 | |
| DNRC CONSERVATION DISTRICT DIVISION | | |
| Water Reservation Development Program | 32,000 | |
| GREEN MOUNTAIN CONSERVATION DISTRICT | | |
| Fire Hydrants for Trout Creek Water System | 18,720 | |
| LAKESIDE WATER DISTRICT | | |
| Stoner Creek Road and Woodacres Main | 28,500 | |
| STATE LANDS, DEPARTMENT OF | | |

Pilot Urban Forestry Project 60,000

(b) The grants approved for the university of Montana and Montana state university do not include funding for indirect costs.

(4) The following contingencies apply to the grants to the Montana state library for the natural resource information system, water information system, and natural heritage program:

(a) Beginning October 1, 1989, the Montana state library shall:

(i) charge a minimum rate of $25 an hour to private sector users of the natural resource information system, water information system, and natural heritage program;

(ii) charge a subscription fee to private sector users; or

(iii) based on the recommendation of the natural resource data system advisory committee, develop a different charging method that results in an equitable cost to private users.

(b) Charges developed pursuant to subsection (4)(a) do not apply to government agencies or public users of the natural resource information system, water information system, and natural heritage program.

(c) Charges under subsection (1)(a) are limited to charges for services of the natural resource information system, water information system, and natural heritage program and do not establish a precedent for setting charges for other library services.

(d) The Montana state library shall develop and use a recordkeeping system to specify the private sector users of the natural resource information system, water information system, and natural heritage program data bases and services. The use data must be provided to appropriate entities of the legislature for use in decisions on the long-term funding of the natural resource information system, water information system, and natural heritage program.

(e) If the grants are funded at the approved level, money collected from the charging system developed under subsection (4)(a) must be deposited in the renewable resource development account. If the grants are funded at less than the approved level, money collected from the charging system developed under subsection (4)(a) must be deposited in the Montana state library account to offset the costs of the natural resource information system, water information system, and natural heritage program, and such deposits are hereby appropriated. These deposits, when combined with the available funding, may not exceed the total amount of the approved grants.

Section 3. **Opportunity to receive loans for projects that do not receive grants.** Sponsors of recommended projects and activities on the prioritized lists in [sections 1 and 2] that are not recipients of available grant funds must be offered the opportunity to receive loan funds for up to the total recommended project amount, subject to the conditions described in [this act]. The interest rate applicable to these loans must be the rate paid on bonds issued pursuant to [this act].

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Section 4. **Approval of loans from bond proceeds and completion of appropriation.** (1) The legislature, pursuant to 85-1-605, 85-1-606, and 90-2-107, hereby approves loans to private sponsors approved by the department of natural resources and conservation during the 1990-91 biennium and the loans for projects and activities identified and described in [section 1] to public entities from water development bond proceeds, interest earnings on such proceeds deposited in the water development debt service fund, and loans from renewable resource development bond proceeds deposited in the renewable resource development account. Bond proceeds may be used for the payment of bond issuance costs. Funds are appropriated for these costs to a maximum of 4% of the amount of each bond sale.

(2) The approval of specific loans completes an appropriation of the coal severance tax proceeds allocated by 15-35-108 to the water development bond account for the purpose of paying, in the manner established by 85-1-619, principal of and interest and redemption premiums on any water development bonds issued to provide the proceeds for the loans to private and public entities for projects and activities approved in [section 1], and it also completes an appropriation to the renewable resource debt service fund for the purpose of paying, in the manner established by 90-2-123, principal of and interest and redemption premiums on any renewable resource development bonds issued to provide the proceeds for the loans to political subdivisions and local government entities for projects and activities approved in [sections 1 and 2].

Section 5. **Reauthorization of loans and grants approved by 50th legislature.** The 50th legislature, in House Bill No. 7, Laws of 1987, approved loans and grants from the water development and renewable resource development bond accounts for the Cascade County RID No. 26, Sun Prairie, in the amount of $200,000; Carbon County/Roberts Water System Improvements in the amount of $142,500; City of Shelby in the amount of $100,000; Sage Creek County Water District in the amount of $158,600; and Town of Cascade in the amount of $200,000. Loans and grants for the entities described in this section are hereby reauthorized.

Section 6. **Reallocation of resource indemnity trust account interest income.** Except for special departmental appropriation and notwithstanding any provisions of 85-1-604 to the contrary, all remaining interest income allocated to the water development state special revenue account from the resource indemnity trust fund by 15-38-202(2) during the 1990-91 biennium may be used only for the purposes set out in 85-1-604(3)(c).

Section 7. **Emergency grants.** There is appropriated to the department of natural resources and conservation up to $125,000 from the water development state special revenue account to be used for emergency projects. If these funds are not needed for emergencies, they may be used for grants approved in [section 1].

Section 8. **Conditions of loans and grants.** Disbursement of funds under [this act] for both loans and grants is subject to the following conditions that must be met by project sponsors:

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(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource and water development programs project evaluations and recommendations report for the 1990-91 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved loan authority;

(4) execution of a loan or grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan or grant as evidenced from the application to the department or from the proposal to the legislature.

Section 9. **Conditions for grants.** Notwithstanding the conditions described in [section 1], grant funds are disbursed in the order of priority listed in [section 1] as coal tax and resource indemnity trust account interest income revenues are received. No project approved by [this act] is entitled to receive grant funds not collected and allocated to the water development state special revenue account or the renewable resource development account.

Section 10. **Conditions for loans.** Each sponsor authorized for a loan from water development bond proceeds or renewable resource development bond proceeds may be required to pay to the department of natural resources and conservation a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 11. **Private and discount purchase of loans.** Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence thereof may be made and purchased by and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to such political subdivisions or local government entities.

Section 12. **Appropriations established.** For any entity of state government that receives a grant or loan under [this act], an appropriation is established for the amount of the grant or loan upon award of the grant or loan by the department of natural resources and conservation.

Section 13. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. **Effective date.** [This act] is effective on passage and approval.

Approved May 11, 1989.

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# HOUSE BILL NO. 776

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; AND ESTABLISHING CONDITIONS FOR GRANTS.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriations for reclamation and development grants.** (1) There is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account all funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38, with the exception of those allocations made in 15-38-202 and 75-1-1101.

(2) There is appropriated to the department the balance of the interest income of the resource indemnity trust fund, including any funds remaining unspent and unencumbered at the end of fiscal year 1989.

(3) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 3 and 4].

Section 2. **Approved grant projects.** (1) The legislature approves the grants listed in subsection (2)(a), to be made in the order of priority as indicated within the following list of projects and activities. If conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific contingencies established for each project and activity are contained within the department of natural resources and conservation's Montana reclamation and development grants program project evaluations and recommendations report for the 1990-91 biennium.

(2) (a) The following are the grant program prioritized projects and activities:

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| Applicant/Project | Grant Amount |
|---|---|
| LEWIS AND CLARK COUNTY CONSERVATION DISTRICT | |
| Blackfoot River Abandoned Mines | $300,000 |
| STATE LANDS, DEPARTMENT OF | |
| Elkhorn Creek Water Quality Improvement Project | 300,000 |
| STATE LANDS, DEPARTMENT OF | |
| Wood Chute Creek Basin Water Quality Improvements | 300,000 |
| MONTANA STATE UNIVERSITY RECLAMATION RESEARCH UNIT | |
| The Fate of Cyanide in Soils and Heap-Leach Pads | 140,243 |
| MONTANA BUREAU OF MINES AND GEOLOGY | |
| Land Application of Cyanide Leach Solutions | 91,161 |
| MONTANA SALINITY CONTROL ASSOCIATION | |
| Salinity Control: A Nonpoint Source Pollution Management Program | 200,000 |
| HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF | |
| Pesticide Contamination Cleanup in Montana | 150,000 |
| BUTTE-SILVER BOW, GOVERNMENT OF | |
| Public Lands Reclamation Project | 120,800 |
| TOOLE COUNTY | |
| North Toole County Reclamation Project | 299,040 |
| MONTANA STATE LIBRARY | |
| Montana Natural Heritage Program | 197,607 |
| STATE LANDS, DEPARTMENT OF | |
| Middle Fork Warm Springs Creek Reclamation Project | 150,000 |
| MONTANA BUREAU OF MINES AND GEOLOGY | |
| The Use of Natural Zeolites in Reducing Heavy Metal Concentrations at Mining Operations and Impacted Lands | 149,238 |
| KALISPELL, CITY OF | |
| Lawrence Park Slope Stabilization and Reclamation | 170,260 |
| MONTANA BOARD OF OIL AND GAS CONSERVATION | |
| Broadview Well | 65,600 |
| DNRC — CONSERVATION DISTRICTS DIVISION | |
| Nonpoint Source Pollution Control in Montana | 262,573 |

(b) The grants approved for Montana state university and the Montana bureau of mines and geology do not include funding for indirect costs.

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(3) The following contingencies apply to the grant for the Montana state library for the natural heritage program:

(a) Beginning October 1, 1989, the Montana state library shall:

(i) charge a minimum rate of $25 an hour to private sector users of the natural heritage program services;

(ii) charge a subscription fee to private sector users; or

(iii) based on the recommendation of the natural resource data system advisory committee, develop a different charging method that results in an equitable cost to private users.

(b) Charges developed pursuant to subsection (3)(a) do not apply to government agencies or public users of the natural heritage program.

(c) Charges under subsection (3)(a) are limited to charges for services of the natural heritage program and do not establish a precedent for setting charges for other library services.

(d) The Montana state library shall develop and use a recordkeeping system to identify the private sector users of the natural heritage program data bases and services. The use data must be provided to appropriate entities of the legislature for use in decisions on the long-term funding of the natural heritage program.

(e) If the grant is funded at the approved level, money collected from the charging system developed under subsection (3)(a) must be deposited in the reclamation and development account. If the grant is funded at less than the approved level, money collected from the charging system developed under subsection (3)(a) must be deposited in the Montana state library account to offset the costs of the natural heritage program, and such deposits are hereby appropriated. These deposits, when combined with the available funding, may not exceed the amount of the approved grant.

Section 3. **Coordination of fund sources for grants program projects.** A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and either the water development program or the renewable resource development program may not receive duplicative funding.

Section 4. **Conditions of grants.** Disbursement of grant funds under [this act] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendations section of the project narrative of the reclamation and development grants program report for the 1990-91 biennium.

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(4) An agreement between the department and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. **Appropriations established.** For any entity of state government that receives a grant under [this act], an appropriation is established for the amount of the grant upon award of the grant by the department of natural resources and conservation.

Section 6. **Reversion of funds.** All funds allocated to the grants reclamation and development special revenue account under [this act] that are unspent and unencumbered on June 30, 1991, revert to that account.

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 11, 1989.

# HOUSE BILL NO. 777

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS AND TO AUTHORIZE THE ISSUANCE AND SALE OF GENERAL OBLIGATION LONG-RANGE BUILDING PROGRAM BONDS; TO APPROPRIATE THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1991; TO PROVIDE FOR AN AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; TO PROVIDE FOR A NEW AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE BOARD OF REGENTS; TO PROVIDE FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** For the purposes of [this act], unless otherwise stated, the following definitions apply:

(1) "Agency" includes each state office, department, board, commission, council, committee, the university system, or any other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

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(2) "Approved budget amendment" means approval by the budget director of a request submitted through the architecture and engineering division of the department of administration to transfer excess funds appropriated to a capital project within an agency in order to increase the appropriations of another capital project within that agency or to obtain financing to expand a project with funds that were not available for consideration by the legislature.

(3) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in [this act].

(4) "CPF" means the capital projects fund.

(5) "Major maintenance" means building maintenance or repair projects that are not needed on an annual or biennial basis or are not the function of the permanent maintenance staff of the agency.

(6) "Major maintenance plan" means a 6-year schedule of anticipated major maintenance requirements and costs for the first 2 years of the schedule, developed for each state building, as determined by the department of administration. The plan must include a record of major maintenance performed in the previous biennium.

(7) "Other appropriated funds" means money other than general fund money or capital projects fund money, including special revenue fund money, that accrues to an agency under the provisions of law.

Section 2. **Expansion required to be authorized.** An existing capital project may not be expanded beyond the scope of the project as approved by the 51st legislature unless the capital project expansion is authorized by an approved budget amendment.

Section 3. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund revert to the general fund.

Section 4. **Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are reappropriated until June 30, 1991, for the purposes for which originally appropriated.

Section 5. **Major maintenance plan — requirements.** For all new construction proposals submitted to the legislature and for all existing applicable state buildings, as determined by the department of administration, each agency, in consultation with the architecture and engineering division of the department of administration, shall provide a major maintenance plan. This plan must be submitted by the agency to the department of administration by July 1 of each even-numbered year, along with the proposed long-range building program required under 17-7-202.

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Section 6. **Capital projects appropriations.** The following money is appropriated to the department of administration for the indicated capital projects from the indicated sources:

| Agency/Project | CPF | Other Appropriated Funds | |
|---|---|---|---|
| DEPARTMENT OF ADMINISTRATION | | | |
| Hazardous Material Abatement, Statewide | $ 200,000 | | |
| Maintain Water Towers and Systems, Statewide | 450,000 | | |
| DEPARTMENT OF AGRICULTURE — PLANT INDUSTRY DIVISION | | | |
| Remodel Grain Laboratory, Great Falls | | 45,500 | State Special Revenue |
| DEPARTMENT OF EDUCATION Roof Repair, Academic Building, Montana School for the Deaf and Blind | 10,000 | | |
| DEPARTMENT OF FAMILY SERVICES | | | |
| Replace/Repair Roof, Custer Lodge, Pine Hills School | 155,000 | | |
| DEPARTMENT OF FISH, WILDLIFE, AND PARKS Fishing Access Sites Improvement, Statewide | | 183,000 | State Special Revenue |
| | | 519,000 | Federal Special Revenue |
| Construct Region 2 Headquarters Storage, Missoula | | 25,920 | State Special Revenue |
| Waterfowl Habitat Enhancement, Statewide | | 424,500 | State Special Revenue |
| Boat Facilities, Statewide | | 54,923 | State Special Revenue |
| | | 163,770 | Federal Special Revenue |
| State Park Maintenance and Development, Statewide | | 1,181,500 | State Special Revenue |
| | | 1,137,500 | Federal Special Revenue |
| State Property Improvement, Statewide | | 165,037 | State Special Revenue |
| Donation Authority, East Gallatin Park, Bozeman | | 100,000 | State Special Revenue |
| Lake Elmo Improvements | 150,000 | 150,000 | State Special Revenue |
| DEPARTMENT OF HIGHWAYS | | | |
| Maintenance Projects, Statewide | | 750,000 | Highways State Special Revenue |
| Maintenance Section, Headquarters Complex, Bridger | | 140,460 | Highways |
| State Special Revenue | | | |
| Construct Sandhouses, Statewide | | 118,800 | Highways State Special Revenue |
| Headquarters Renovation, Glendive | | 72,480 | Highways State Special Revenue |
| Construct Equipment Storage Additions, Statewide | | 419,480 | Highways |
| State Special Revenue | | | |
| DEPARTMENT OF INSTITUTIONS | | | |
| Construct Low Security Housing Unit, MSP | 1,184,600 | | |
| Building Modifications and Exterior Lighting, Center for the Aged | 45,396 | | |
| Roof Replacement/Repair, Department of Institutions | 352,500 | | |
| Boiler Room Water Softeners, Montana State Hospital, Galen | 45,000 | | |

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| Agency/Project | CPF | Other Appropriated Funds | |
|---|---|---|---|
| Supplemental Appropriation for Montana Developmental Center | 289,900 | | |
| Replace Hospital Floors, Montana State Hospital, Galen | 20,000 | | |
| Correct Code Deficiencies, Montana State Hospital, Galen | 15,000 | | |
| Remodel Unit 57 for Women's Correction Center, Montana State Hospital | 45,000 | | |
| DEPARTMENT OF LABOR AND INDUSTRY | | | |
| Acquisition of Arcade Building, Lower Level, Helena | | | |
| Power Supply Project, Workers' Compensation, Helena | | 26,000 | State Special Revenue |
| HVAC Replacement and Major Maintenance, Helena Job Service | | 53,600 | Federal |
| Special Revenue | | | |
| Repair Settling Damage, Great Falls Job Service | | 50,000 | Federal Special Revenue |
| Heating Unit Replacement, Missoula Job Service | | 50,000 | Federal Special Revenue |
| Construct/Purchase, Butte Job Service | | 211,000 | Federal Special Revenue |
| Parking Lot Construction, Havre Job Service | | 10,000 | Federal Special Revenue |
| Basement Renovation, Bozeman Job Service | | 100,000 | Federal Special Revenue |
| DEPARTMENT OF STATE LANDS | | | |
| Interagency Fire Center and Hangar, Helena | | 54,800 | Federal Special Revenue |
| Nursery Freezer and Cooler, Missoula | | 24,000 | State Special Revenue |
| Nursery Shop Building, Missoula | | 101,000 | State Special Revenue |
| Nursery Storage Building, Missoula | | 22,000 | State Special Revenue |
| DEPARTMENT OF MILITARY AFFAIRS | | | |
| Construct M-1 Bays Statewide | 30,000 | 1,340,000 | Federal Special Revenue |
| Remodel Missoula Armory and Study Armories, Statewide | 12,000 | 80,000 | Federal Special Revenue |
| Construct Livingston Armory | 500,800 | 798,000 | Federal Special Revenue |
| Federal Spending Authority | | 689,597 | Federal Special Revenue |
| DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION | | | |
| Oil and Gas Division Addition, Billings | | 116,950 | Oil and Gas State Special Revenue |
| DEPARTMENT OF REVENUE | | | |
| Maintain Liquor Warehouse Roof | | 170,000 | Enterprise Funds |
| MONTANA UNIVERSITY SYSTEM | | | |
| Carpet Replacement, Administration Building, Missoula Vo-Tech Center | 80,000 | | |
| Replace Roofs, Montana University System | 473,120 | | |
| Electrical Distribution System, Phase II, MSU | 1,153,355 | 524,871 | Auxiliary |
| Major Maintenance, Water Mains, University of Montana | 130,000 | | |

| Agency/Project | CPF | Other Appropriated Funds |
|---|---|---|
| Exterior Door and Vestibules, Western Montana College | 14,000 | |
| Window Retrofit, Engineering Hall, Montana Tech | 132,750 | |
| Miscellaneous Projects, University of Montana | | 217,039 UM Building Fees |
| Centennial Mall, Montana State University | | 650,000 Private Endowments |

Section 7. **Capital improvements appropriation to the Montana state prison ranch.** The following money is appropriated to Montana State Prison in the indicated amounts for the purposes of making capital improvements to the Montana State Prison ranch and dairy:

| Agency/Project | Other Appropriated Funds |
|---|---|
| Supervisor Housing Units, Montana State Prison Ranch | $135,000 Ranch Internal Service Fund |
| Tin Cup Joe Irrigation System, Montana State Prison Ranch | 200,000 Ranch Internal Service Fund |

Section 8. **Capital improvements — fish, wildlife, and parks.** (1) The appropriation for improvements at Lake Elmo from the capital projects fund must be matched equally by local funds. The department of administration may expend only that portion of the appropriation that is equally matched on a cash basis. In-kind services may not be considered as a match.

(2) The appropriation to the department of fish, wildlife, and parks for state park maintenance and development includes $168,000 in highway gas tax funding and $80,000 for improvements at Lewis and Clark caverns and at least $330,000 for improvements and repairs at Canyon Ferry, which includes $80,000 from bureau of reclamation funds. The department may spend up to $500,000 of the appropriation for park maintenance and development for the Makoshika model parks program.

Section 9. **Land acquisition appropriation.** (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, or easement purchase:

| Agency/Project | CPF | Other Appropriated Funds |
|---|---|---|
| Wildlife Habitat Acquisition, Statewide | | $5,226,400 State Special Revenue |
| Bighorn Sheep Habitat Acquisition, Statewide | | 211,600 State Special Revenue |
| Fishing Access Site Acquisition, Statewide | | 525,755 State Special Revenue |

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| Agency/Project | CPF | Other Appropriated Funds |
|---|---|---|

(2) The following money is appropriated to the department of highways in the indicated amount for the purpose of land acquisition:

| | | |
|---|---|---|
| Land Acquisition, Kalispell | | 80,000 Highways State Special Revenue |

Section 10. **Inspection and study of dams.** (1) The following money is appropriated to the department of fish, wildlife, and parks in the amounts indicated for the purposes of the inspection, study, and renovation of dams:

| Agency/Project | CPF | Other Appropriated Funds |
|---|---|---|
| Engineering Study, Bearpaw Dam, Havre | | $25,000 State Special Revenue |
| | | 75,000 Federal Special Revenue |
| Clearwater Fish Barrier Renovation/Removal, Seeley Lake | | 25,000 State Special Revenue |
| | | 75,000 Federal Special Revenue |
| Dam Inspection, Statewide | | 30,000 State Special Revenue |

(2) The following money is appropriated to Montana state prison in the amount indicated for the purpose of the inspection, study, and renovation of dams on the Montana state prison ranch and dairy:

| Agency/Project | Other Appropriated Funds |
|---|---|
| Powell Reservoir Dam and Other Ranch Reservoir Dams | $110,000 Ranch Internal Service Fund |

In accordance with 85-1-101, the department of natural resources and conservation shall coordinate and manage the projects.

Section 11. **River restoration.** The following money is appropriated to the department of fish, wildlife, and parks for river restoration:

| Agency/Project | CPF | Other Appropriated Funds |
|---|---|---|
| River Restoration | | $168,000 State Special Revenue |

Section 12. **Appropriation of excess capital projects fund.** The uncommitted cash balance remaining in the capital projects fund, including any revenues received and prior year revenue adjustments and transfers during the 1990-91 biennium in excess of the appropriation balances remaining under [sections 4 and 6], are appropriated to the department of state lands for the indicated capital project:

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| Agency/Project | CPF | Other Appropriated Funds |
|---|---|---|
| Maintenance and Improvement Projects, Statewide | $34,200 | |

Section 13. **Reappropriation of unspent bond proceeds.** Funding for the following projects is appropriated from the unspent portion of the 1985 long-range building program bond proceeds issued to finance a swimming pool addition at western Montana college:

| Agency/Project | CPF | Other Appropriated Funds |
|---|---|---|
| MONTANA UNIVERSITY SYSTEM | | |
| Physical Education Building Roof Replacement, WMC | | $230,000 |
| Planning Remodel of Student Union Building, WMC | | 50,000 |

Section 14. **New agreement with the board of regents.** (1) For the funds authorized and appropriated by [this act] for the physical education building roof replacement and for planning the student union building remodel at western Montana college, the board of examiners and the board of regents shall enter into an agreement by which the board of regents shall pay the state treasurer, beginning in fiscal year 1990, an amount equal to 6.7% of each semiannual principal and interest payment due on the bonds. Such payments must continue until the bonds are paid in full.

(2) Until August 1, 1989, the investment income from investment of the unspent proceeds of the long-range building program bonds, series 1985A, issued to finance a swimming pool addition at western Montana college must be credited against the payment obligations of the board of regents under the July 24, 1985, agreement between the board of examiners and the board of regents.

(3) After the August 1, 1989, principal and interest payment is made on the bonds, the department of administration shall transfer from the bond proceeds account to the capital projects fund all funds not appropriated in [section 13].

(4) The interest earnings on those funds appropriated to western Montana college that remain in the account after August 1, 1989, must be a credit against the payment obligations of the board of regents under the new agreement.

Section 15. **Disposition of unspent bond proceeds and related investment income.** Excess investment income and excess principal of bonds issued for a specific purpose or project may be placed in the debt service fund to retire bonds issued for the purpose or project.

Section 16. **Appropriation of bond proceeds and other funds.** The following money is appropriated from the other appropriated funds to the department of administration for the capital projects described in this

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section, contingent upon the respective authorization and sale of general obligation long-range building program bonds by the 51st legislature and the board of examiners:

| Agency/Project | CPF | Other Appropriated Funds |
|---|---|---|
| DEPARTMENT OF FISH, WILDLIFE, AND PARKS | | |
| Region 7 Headquarters Construction, Miles City | | $ 950,000 |
| Hatchery Construction and Renovations, Anaconda, Arlee, Lewistown | | 2,592,800 |

Section 17. **Authorization of bonds.** The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $3,542,800 for the projects described in [section 16] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1989, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds.

Section 18. **Agreement with the department of fish, wildlife, and parks.** For the proceeds of bonds or notes authorized and appropriated by [this act] for the construction of the region 7 headquarters or the renovation of fish hatcheries operated by the department of fish, wildlife, and parks, the board of examiners and the department of fish, wildlife, and parks may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves required under such bonds. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for construction or renovation costs may be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payments by the department must be made from funds available therefor.

Section 19. **Benefit of state.** The agreements made pursuant to [sections 14 and 18] are solely for the benefit of the state of Montana and are not enforceable by bondholders or other third-party beneficiaries.

Section 20. **Department of fish, wildlife, and parks — bond payment.** The department of fish, wildlife, and parks shall transfer to the department of administration, prior to the payment date, sufficient funds to retire $3,542,800 of general obligation long-range building program bonds authorized by the 51st legislature and issued by the board of examiners. This payment obligation is for the benefit of the state and not enforceable by bondholders.

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Section 21. **Fish hatchery reauthorization.** The appropriations for capital projects authorized in section 5, House Bill No. 900, enacted by the 48th legislature, and in section 6, House Bill No. 5, enacted by the 50th legislature, for the Creston Springs hatchery operated by the department of fish, wildlife, and parks are appropriated through the biennium ending June 30, 1991, for a kokanee salmon facility.

Section 22. **Authorizing inmate labor for construction of prison projects.** For the purposes of constructing a 96-man housing unit authorized in [section 6]; the ranch housing units and the irrigation system at Montana state prison authorized in [section 7]; and the inspection, study, and renovation of dams at Montana state prison authorized in [section 10(2)]; the department of institutions may use inmate labor to construct the projects and is exempt, for the purposes of completing these projects, from the provisions of 53-1-301(1)(g). The department of administration may exempt these projects from any provisions of Montana law relating to public bidding, bonding, workers' compensation coverage, or labor and wage requirements.

Section 23. **Building demolition or sale and removal.** (1) The department of administration may solicit bids for the demolition or for the sale and removal of the following buildings:

| | Building Name |
|---|---|
| Montana Developmental Center | Cottage No. 5 |
| | Old Administration Building |
| | Old Laundry Storage |
| | Tire/Rubber Storage |
| | Garage |
| | Hog House |
| | Old Granary |
| | Turkey House |
| | Ranch House |
| | Garage |
| | Chicken House |
| | Old Machine Shed |
| | Root Cellar |
| Montana Veterans' Home | Old Main & Annex |
| | Old Dorm |
| | Boiler Room |
| | Superintendent's Residence |
| Montana State Hospital | Bolton |
| | Former Children's Unit |
| | Apartment Building "A" |
| | W.S. Superintendent's Residence |
| | Old Butcher Shop |
| | Byron Hall |
| | Former Lighthouse |
| | Maintenance Shop |
| | Lumber Storage |

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Old Barn

(2) The director of the department of institutions shall certify to the department of administration that each of the buildings set forth in subsection (1) is surplus to the needs of the department and the state by reason of the building's age, deteriorated physical condition, safety considerations, or license deficiencies and has no residual economic or useful life. If the cost of repairing the deficiencies would preclude reasonable restoration and refurbishing efforts, the director of the department of administration may grant an order to proceed with demolition if:

(a) a successful contractor or bidder agrees to demolish or remove the building and reclaim the building site based on the salvage value of the building itself; and

(b) the demolition or removal of the building does not violate the provisions of the state antiquities law, as provided in Title 22, chapter 3, part 4, relative to established heritage properties under state ownership.

(3) The director of the department of administration may permit the director of the department of institutions to use the prison industries program, established in 53-1-301 through 53-1-304, to demolish and remove selected institutional buildings listed in subsection (1). The proceeds from the sale of salvageable material obtained through the demolition process must be deposited in the prison industries proprietary account. Permission may be granted only after the office of budget and program planning and the legislative finance committee determine that the proceeds from the sale of salvageable material will support the cost of demolition and removal.

Section 24. **Sale of state lands at Montana state prison.** Pursuant to the provisions of 77-2-302 requiring that the board of land commissioners consult with an appropriate legislative committee prior to the sale of buildings formerly used by a state institution, the board is hereby authorized to sell the following property if it determines this sale to be in the best interest of the state. Sale proceeds must be deposited in the capital projects funds. The board is authorized to pay costs of necessary surveys, appraisals, and all other costs associated with the sale of land from the proceeds of the sale. The land that may be sold is approximately 10 acres of land formerly known as the Bratten ranch, with approximately 14 structures. This property borders on Main Street in the city of Deer Lodge, a Montana power substation, and the department of highways garage.

Section 25. **Planning and design.** The department of administration may proceed with the planning and design of capital projects prior to the receipt of other appropriated funds. The department may use interaccount loans in accordance with 17-2-107 to pay such planning and design costs incurred prior to the receipt of other appropriated funds.

Section 26. **Capital projects — contingent funds.** If any capital project is financed in whole or in part with appropriations contingent upon the receipt of other appropriated funds, the department of administration may not let such projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. No financial plan may be approved by the director if:

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(1) the level of funding provided under the financial plan deviates substantially from the funding levels provided in [this act] for that project; or

(2) the scope of the project must be substantially altered or revised from the preliminary plans presented for that project in the 1989-91 long-range building program presented to the 51st legislature.

Section 27. **Legislative consent.** The appropriations authorized in [this act] constitute legislative consent for the capital projects contained in [this act] within the meaning of 18-2-102.

Section 28. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 29. **Requirements for approval of state debt — severability.** Because [section 17] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [sections 16 through 20]. If [section 17] is not approved by the required vote, [sections 16 through 20] are void. The remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment.

Section 30. **Effective date.** [This act] is effective on passage and approval.

Approved May 16, 1989

# HOUSE BILL NO. 778

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE WATER DEVELOPMENT PROGRAM; TO APPROVE THE ISSUANCE OF COAL SEVERANCE TAX BONDS TO PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; TO REAUTHORIZE COAL SEVERANCE TAX BONDS FOR CERTAIN PROJECTS APPROVED BY THE 50TH LEGISLATURE; TO APPROPRIATE COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; TO AUTHORIZE THE CREATION OF A STATE DEBT; TO PLACE CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Coal severance tax bonds authorized.** (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved water resource development projects and activities as part of the state water development program. Available funds from previous sales of coal severance tax bonds may

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also be used for the projects approved in [this act]. The legislature finds that the water development projects in [this act] meet the provisions of 17-5-702. The board of examiners may issue coal severance tax bonds in an amount not to exceed $25,619,784 for the purpose of making loans and financing state projects, establishing a reserve for the bonds, and paying the costs of issuance. Funds are appropriated for these costs of issuance to a maximum of 4% of the amount of each bond sale.

(2) The board of examiners may issue coal severance tax bonds for loans to political subdivisions and local government entities not to exceed the loan amount listed for the project.

GROUP A Notwithstanding the conditions set forth in [section 6], the interest rate for the project in this group must be 4% over a 30-year term or 3% if the lower interest rate is necessary to secure the federal loan.

| | Loan Amount |
|---|---|
| EAST BENCH IRRIGATION DISTRICT | |
| Gravity Sprinkler Irrigation No. 3 | $431,000 |

GROUP B Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group may be 3% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

| | Loan Amount |
|---|---|
| LAKE COUNTY/BIG ARM SEWER DISTRICT | |
| Big Arm Sewer | $2,283,893 |
| SOMERS COUNTY WATER AND SEWER DISTRICT | |
| Somers Sewer | 3,151,960 |

GROUP C Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group may be 2% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

| | Loan Amount |
|---|---|
| CITY OF BOZEMAN | |
| Lyman Creek Water System Improvement | $ 386,893 |
| CITY OF GLENDIVE | |
| Water Treatment Plant | 4,075,000 |
| NOXON COMMUNITY | |
| Gravity Water Company Water System Improvement—Phase I | 222,550 |
| CITY OF WHITEFISH | |
| Water Treatment and Distribution | 6,035,800 |

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| | |
|---|---|
| TOWN OF WIBAUX | |
| Water Storage Reservoir/Transmission Line | 250,000 |
| SUN PRAIRIE VILLAGE | |
| Water and Sewer District Wastewater System Improvements | 584,014 |

GROUP D Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group may be 1% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

| | Loan Amount |
|---|---|
| TOWN OF FAIRVIEW | |
| Water Treatment Facility Improvements | $ 258,250 |
| CITY OF MILES CITY | |
| Water Treatment/Presedimentation Basin | 1,532,910 |
| PARK COUNTY WATER DISTRICT/GARDINER | |
| Jardine Pressure Zone Improvements | 360,500 |

GROUP E Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group must be sold at the rate at which the state bond is sold for 20 years.

| | Loan Amount |
|---|---|
| TOWN OF BROWNING | |
| Sewage Treatment Facility Improvements | $447,014 |
| ANACONDA/DEER LODGE COUNTY | |
| Wastewater Treatment Plant Effluent Disposal | 500,000 |

(3) (a) The legislature finds that the following state water project for rehabilitation and repair for which coal severance tax bonds were authorized by the 50th legislature in House Bill No. 7, Laws of 1987, has not been completed. The board of examiners is authorized to issue coal severance tax bonds for this project to a maximum amount listed in this section. The state bond rate must be paid on this loan.

| | Loan Amount |
|---|---|
| MIDDLE CREEK DAM REHABILITATION | $5,100,000 |

(b) Bonds may be issued by the board of examiners after the water users for this project have entered into contractual agreements providing for the repayment of the cost of repair and rehabilitation at a rate of interest equal to that which must be paid on bonds issued pursuant to this section. The repayment money from this project is pledged, dedicated, and appropriated to the special debt service bond account established in the state treasury for the benefit of the bonds approved for such projects.

Section 2. **Extension of first semiannual payment due for Lakeside County sewer district's wastewater collection treatment and disposal facilities from September 1988.** The 20-year loan term is

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extended to 30 years at the same interest rate as approved by the 49th legislature.

Section 3. **Appropriation — creation of debt for coal severance tax bonds.** (1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond subfund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [this act] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [this act] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(2) The legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana constitution, authorizes the creation of a state debt in an amount not to exceed $5,100,000 for the rehabilitation of state water projects approved in [this act] and an amount not to exceed $20,519,784 for loans to political subdivisions and local government entities for water development projects approved in [this act], all for the issuance of up to $25,619,784 in coal severance tax bonds authorized by [this act].

(3) In connection with the operation of the Broadwater hydroelectric project, the department of natural resources and conservation may pay an amount not to exceed $10,000 from the 1987 Series A irrigation subaccount revenues required by the agreement dated July 24, 1987, between the department and the Broadwater-Missouri water users association. The department may also expend revenues in an amount not to exceed $168,000 from the 1987 Series A replacement and renewal subaccount for replacement and renewal of Broadwater hydropower project equipment and facilities.

(4) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(5) Earnings on bonds proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account and may be used for the purposes allowed under 85-1-604(3)(b).

(6) Loan repayments from loans financed with coal severance tax bonds, loan principal, interest, and bond issuance fees borrowed from bond proceeds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

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Section 4. **Projects not completing requirements — loans reauthorized.** The legislature finds that the following water development projects for which coal severance tax bonds were authorized to be issued by the 50th legislature in House Bill No. 7, Laws of 1987, may not complete the requirements necessary for the loan transaction prior to June 30, 1989. Coal severance tax bonds for the projects described in this section are reauthorized in the amounts listed at the interest rates authorized by the 50th legislature in House Bill No. 7, Laws of 1987, and described in this section to enable financing during the 1990-91 biennium, if necessary.

GROUP A Notwithstanding the conditions set forth in [section 6], the interest rate for the project in this group may be 4% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

| | Loan Amount |
|---|---|
| DUTTON | |
| Water Supply Construction | $150,000 |

GROUP B Notwithstanding the conditions set forth in [section 6], the interest rate for the project in this group may be 3% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

| | Loan Amount |
|---|---|
| EVERGREEN WATER AND SEWER DISTRICT | |
| Wastewater Facilities | $3,226,900 |

GROUP C Notwithstanding the conditions set forth in [section 6], the interest rate for projects in this group may be 2% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

| | Loan Amount |
|---|---|
| EAST GLACIER | |
| Water System | $484,270 |
| PONDERA CONSERVATION DISTRICT | |
| Irrigation System Rehabilitation | 750,000 |

Section 5. **Conditions of loans.** (1) Disbursement of funds under [this act] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

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(c) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource and water development program project evaluations and recommendations report for the 1990-91 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved loan authority;

(d) execution of a loan agreement with the department of natural resources and conservation; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 6. **Interest rates on loans.** Loans made from proceeds of coal severance tax bonds must be at interest rates specified in [section 1], except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource and water development program project evaluations and recommendations report for the 1990-91 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of each bond, an assured rate of interest thereon as if the bond bore interest at a fixed rate. The assured rate of interest so established must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to [section 1].

Section 7. **Private and discount purchase of loans.** Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made and purchased by and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to such political subdivisions or local government entities.

Section 8. **Appropriations established.** For any entity of state government that receives a loan under [this act], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Requirements for approval of state debt.** Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved May 16, 1989.

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# RESOLUTIONS

ENACTED BY THE

## Fifty-first Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1989

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# RESOLUTIONS

## SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN THEIR PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules be adopted:

CHAPTER 10
ADMINISTRATION

**10-10. Time of meeting.** Each house may order its time of meeting.

**10-20. Legislative day — duration.** (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

**10-30. Schedules.** The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

**10-40. Adjournment — recess — meeting place.** A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

**10-50. Access of press.** Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

**10-60. Conflict of interest.** A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house of which he is a member.

**10-70. Telephone calls.** (1) Long distance telephone calls made by a member while the Legislature is in session or the member is in travel status are considered official legislative business. These include, but are not limited to, calls made to constituencies, places of business, and family members.

(2) Session staff, including aides and interns, may use telephones for long distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable



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for use of state telephones by their staff, including aides and interns, and may not authorize others to use state phones.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

**10-80. Joint employees.** The presiding officers of each house, acting together, shall:

(a) hire joint employees; and

(b) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

**10-90. Legislative interns.** Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

**10-100. Legislative Council.** (1) The staff of the Legislative Council shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

**10-110. Compensation of legislative employees.** The Legislature by joint resolution shall prescribe the compensation of the employees of each house.

**10-120. Engrossing and enrolling staff — duties.** (1) The Legislative Council shall hire all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

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(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. Any of these may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chairman may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chairman is the principal sponsor for the purpose of this section.

**10-130. Bills.** (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) introduced in triplicate; and

(d) for the original copy, covered with a cover page of a substantial material.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title, except in general appropriation bills and bills for the codification and general revision of the laws.

(5) Introduced bills must be reproduced on white paper and distributed to members.

**10-140. Voting.** (1) A bill may not become a law except by vote of a majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal. (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

**10-150. Recording and publication of voting.** (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

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(2) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence; or

(d) indefinitely postpone.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society.

**10-160. Journal.** Each house shall:

(1) supply the Legislative Council with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

**10-170. Journals — authentication — distribution.** (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Council shall distribute the completed journals (sections 5-11-201 through 5-11-203, MCA).

## CHAPTER 30
## COMMITTEES

**30-10. Committee chairman.** Except as provided in Joint Rules 30-50 and 30-60, the chairman of the Senate committee is the chairman of all joint committees.

**30-20. Voting in joint committees.** (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house of which he or she is a member.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee must agree before any action may be taken, unless otherwise specified by individual house rules.

**30-30. Conference committees.** (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint

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a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairmen and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to accepting or rejecting each disputed amendment in its entirety.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

**30-40. Conference committee — enrolling.** A conference committee report shall give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

**30-50. Committee consideration of appropriation bills.** (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chairman of the House Committee on Appropriations, who is chairman of the joint committee.

**30-60. Joint committee to estimate revenue.** (1) There is a joint committee composed of members of the House and Senate Committees on Taxation. The joint committee shall consider any resolution introduced for the purpose of estimating revenue that may be available for appropriation by the Legislature. The joint committee must be composed of three members from each political party in each house appointed by the chairmen of the respective Committees on Taxation.

(2) Meetings of the joint committee must be held upon the call of the chairman of the joint committee, who must be a member of the House. The joint committee shall issue periodic reports to each of the houses, indicating the committee's current revenue projections. The reports must be issued on the 40th day and the 60th day.

## CHAPTER 40
## LEGISLATION

**40-10. Amendment to state constitution.** A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

**40-20. Appropriation bills.** (1) All appropriation bills must originate in the House of Representatives.

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(2) Appropriation bills for the operation of the Legislature must be introduced by the chairman of the House Committee on Appropriations.

**40-30. Effective dates.** (1) Every statute, except one that provides for appropriation by the Legislature of public funds for a public purpose, takes effect on October 1 following its passage and approval, unless a different time is prescribed therein.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval, unless a different time is prescribed therein.

(3) A joint resolution takes effect on its passage unless a different time is prescribed therein (Sections 1-2-201 and 1-2-202, MCA).

**40-40. Bill drafting request and introduction limitations.** (1) (a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Council for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Council. At least two of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used.

(d) These limitations on bill and resolution requests do not apply to:

(i) code commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) Bills and resolutions must be reviewed by the staff of the Legislative Council prior to introduction for proper format, style, and legal form. The staff of the Legislative Council shall store bills on the automated bill drafting equipment and shall print and deliver them in triplicate to the requesting members. The original bill cover must be signed to indicate review by the Legislative Council. A bill may not be introduced unless it is so signed.

(3) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it in triplicate to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. In each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

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(4) Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the ..... (Name of committee or agency)".

(5) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Council. Actual signatures may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Council and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

(6) All preintroduced bills must be made available to the public.

**40-50. Schedules for drafting requests and bill introduction.** The following schedule must be followed for submission of drafting requests and introduction of bills and resolutions.

| | Request Deadline 5:00 P.M. Legislative Day | Introduction Deadline 5:00 P.M. Legislative Day |
|---|---|---|
| • General Bills and Resolutions | 10 | 14 |
| • Revenue Bills | 17 | 21 |
| • Committee Bills and Resolutions | 36 | 40 |
| • Committee Revenue Bills | 62 | 66 |
| • Committee bills implementing provisions of a general appropriation act | 75 | 78 |

Bills and resolutions delivered after the applicable introduction deadline must be introduced within 2 legislative days after delivery.

| | | |
|---|---|---|
| • Appropriation Bills | No Deadline | No Deadline |
| • Interim study resolutions | No Deadline | No Deadline |
| • Resolutions to express confirmation of appointments | No Deadline | No Deadline |
| • Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of Administrative Rules | No Deadline | No Deadline |

**40-60. Joint resolutions.** (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt, amend, or repeal the joint rules;

(d) set salaries and other terms of employment for legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(3) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

**40-70. Bills with same purpose — vetoes.** (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in wnich the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

**40-80. Reproduction of full statute required.** A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

**40-90. Bills — original purpose.** A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

**40-100. Fiscal notes.** (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be

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requested by the presiding officer of either house, who, at the time of introduction, shall determine the need for the note, based on the Legislative Council staff recommendation.

(2) Unless the requesting member directs otherwise, the Legislative Council shall deliver three copies of any bill for which it has been determined a fiscal note may be necessary to the state Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request.

(3) The Budget Director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note. He shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall refer it to the committee considering the bill. All fiscal notes must be reproduced and placed on the members' desks.

(5) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(6) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(7) A fiscal note also may be requested on a bill and on an amendment by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor, through the presiding officer.

(8) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

**40-110. Sponsor's fiscal note.** (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, he shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed,

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the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Council shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

**40-120. Substitute bills.** (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

**40-130. Reading of bills.** Prior to passage a bill must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title.

**40-140. Second reading — bill reproduction.** (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

**40-150. Engrossing.** (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed. Committee of the Whole amendments must be included in the engrossed bill. The bill must be placed on the calendar for third reading on the succeeding legislative day.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it may be engrossed without reprinting. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee or Committee of the Whole in the second house, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading consideration. The amendments also must be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments must be distributed in the original house.

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**40-160. Enrolling.** (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and stricken matter must be omitted. The original and two copies of the bill must be red lined. The history of the bill also must be enrolled and placed with the bill in a white manuscript cover, upon which is written the number of the bill and the title. The Legislative Council staff shall file a copy of the history with the law library.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case he shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered in the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Council.

**40-170. Amendment by second house.** (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

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(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

**40-180. Final action on a bill.** When a bill being heard by the second house has received its third reading or has been rejected, the second house must transmit it as soon as possible to the original house with notice of the second house's action.

**40-190. Transmittal of bills between houses.** (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

**40-200. Transmittal deadlines.** (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills and revenue bills, must be transmitted from one house to the other on or before the 70th legislative day.

(c) (i) Revenue bills originating in the Senate must be transmitted to the House on or before the 71st legislative day.

(ii) House amendments to Senate revenue bills must be transmitted by the House to the Senate on or before the 83rd legislative day.

(iii) Revenue bills originating in the House must be transmitted to the Senate on or before the 71st legislative day.

(iv) Senate amendments to House revenue bills must be transmitted by the Senate to the House on or before the 83rd legislative day.

(v) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted no later than the 60th legislative day.

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(b) Amendments to the resolutions must be transmitted to the house of origin no later than the 83rd legislative day.

(3) Interim study resolutions, bills repealing or directing the amendment or adoption of administrative rules, and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

**40-210. Governor's veto.** (1) Each bill passed by the Legislature must be submitted to the Governor for his signature. This does not apply to:

(a) bills proposing amendments to the Montana Constitution;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 5 days after its delivery to him if the Legislature is in session or within 25 days if the Legislature is adjourned, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of his reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, he shall return the bill with his reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

**40-220. Response to governor's veto.** (1) When the presiding officer receives a veto message, he shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

**40-230. Governor's recommendations for amendment.** (1) The Governor may return any bill to the Legislature with his recommendations for amendment.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for his reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

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(3) If the Governor returns a bill to the originating house with his recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for his reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for his reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

## CHAPTER 60
## RULES

**60-10. Suspension of joint rule — change in rules.** (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Council:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

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**60-20. Reference to Mason's Manual.** Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

**60-30. Publication and distribution of joint rules.** (1) The Legislative Council shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and the House of Representatives.

## CHAPTER 70
## STATEMENT OF LEGISLATIVE INTENT

**70-10. Definition.** (1) For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill must express the common understanding of those components of the Legislature voting on the bill.

(2) This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill. Á statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

**70-20. Limitation.** A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, Committee of the Whole or conference committee) agrees by a two-thirds vote to attach the statement.

**70-30. Statement of intent to accompany bill — when — how.** A statement of intent must accompany a bill as follows:

(1) A statement of intent is required for a bill delegating new rule-making or licensing authority.

(2) A statement of intent must be included with the introduced bill for a bill requiring one. If a bill is found to require a statement of intent at any time in the legislative process, a statement of intent may be added under the procedure for amending a bill.

(3) A statement of intent must be included as a part of the bill between the title and the enacting clause under the heading "Statement of Intent".

**70-40. Modification.** Any committee considering a bill may recommend amendment of a previous statement of intent or recommend inclusion of a statement of intent. The statement of intent must be reflected in the history of the bill.

**70-50. Conference committee on statement of intent only.** (1) If the second house concurs in a bill without amendments but amends or

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supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement of intent is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

(2) A new statement of intent written by the second house must be processed in the same manner as a second house amendment.

(3) A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Passed January 24, 1989.

## SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO SEND DELEGATES TO THE WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE.

WHEREAS, the forests of the Western States play a vital role in the economic development of these states; and

WHEREAS, there is an obvious need for developing means to protect and foster these forests to maximize yield while protecting the resource for future generations; and

WHEREAS, proper forest management and use are necessary for the protection and conservation of other important resources, such as wildlife, recreation, and scenic beauty; and

WHEREAS, the subjects that require interstate cooperation include but are not limited to insect infestations, conservation, production, and marketing, all of which know no state boundaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Committees of the Senate and the Speaker of the House of Representatives appoint two Senators and two Representatives, one from each party, to represent Montana on the Western States Legislative Forestry Task Force, which operates as a clearinghouse for opinions from all the various interests involved in the Western States forests and which includes among its duties a report to the Legislatures of the participating states and to the state delegations in the United States Congress concerning means of protecting and fostering the forests of the participating states.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives send copies of this resolution to the presiding officers of

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the Legislatures of Washington, Idaho, Oregon, Wyoming, Alaska, and California and to the Executive Director of the Western States Legislative Forestry Task Force.

Passed March 3, 1989.

## SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE MONTANA CENTENNIAL COMMISSION ON APRIL 1, 1989, TO DECLARE THE 1894 CAPITAL CITY ELECTION BETWEEN ANACONDA AND HELENA VOID; SCHEDULING A SPECIAL ELECTION IN CONJUNCTION WITH THE 1989 CENTENNIAL CELEBRATION TO ALLOW THE PEOPLE OF MONTANA TO CHOOSE A PERMANENT MONTANA CAPITAL; AND PROVIDING FOR THE TEMPORARY SUSPENSION OF MONTANA VOTING STATUTES.

WHEREAS, at the time of ratification of the 1889 Montana Constitution, two state Legislatures existed, each claiming to be the legitimate state legislative body; and

WHEREAS, in the wake of the confusion following these chaotic legislative assemblages, the City of Helena was named the "temporary capital" of Montana; and

WHEREAS, when none of the seven cities on the 1892 ballot received a majority of votes to be named the permanent capital, a runoff election was scheduled for 1894 between the two top contenders, Helena and Anaconda; and

WHEREAS, two "copper kings" became involved, with the founder of Anaconda, Marcus Daly, supporting Anaconda's bid and his political archrival, William A. Clark, backing the bid of Helena; and

WHEREAS, for 94 years Anaconda has consistently alleged that Clark secured the capital for Helena by chicanery, skullduggery, bribery, and corruption, contending, among other things, that Clark hired 250 men to work in Plains, where there was no work, in an effort to buy votes for Helena; and

WHEREAS, for 94 years Anaconda has maintained that feloniously fraudulent practices precipitated its loss by 1,906 votes and has cited glaring evidence establishing that while Montana had only 51,000 registered voters in 1894, 55,000 votes were tallied and validated; and

WHEREAS, the cornerstone of the Bill of Rights is the premise guaranteeing the people the fundamental right to petition the government for redress if an individual or group has been rendered an injustice.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That because the fairminded citizens of Helena cannot live with themselves if such an injustice has indeed been perpetrated, it is fitting and proper that:

(1) this alleged wrong be redressed by authorizing the Montana Centennial Commission to declare the 1894 capital city election between Anaconda and Helena void and by holding an open primary election on June 1, 1989, in which all Montana communities may be entered as contestants for the honor of being the state capital;

(2) all Montana citizens, regardless of age, be encouraged to participate in the selection of Montana's state capital;

(3) the primary and general election ballots be counted by a credible committee appointed by Anaconda City Manager Gene Vukovich and Helena Mayor Russ Ritter, and that the committee include a representative from each community involved in the election;

(4) libations for the committee during the long evening of vote counting be the responsibility of the Helena and Anaconda Centennial Committees, with Mr. Vukovich presiding over hospitality and Mr. Ritter presiding over ballot counting;

(5) the people be allowed to cast votes in the general election held on November 6, 1989, for one of the two communities receiving the largest number of votes in the primary election;

(6) an election judge be appointed by the Legislature if there is any question as to the integrity of the election;

(7) in the event that a community other than Helena is selected as capital city, that city shall:

(a) demonstrate its willingness to accept the honor by supplying the City Commission of Helena with a proposal delineating acceptable monetary compensation to the City of Helena for the loss of employment, the loss of incumbent revenues generated through taxation and fees assessed against state employees, and the hardship wrought upon secondary and other industries, businesses, and individuals that will be affected by relocation of state offices, agencies, and buildings. A certified check in an amount determined by the Commission must be presented to the Mayor of Helena by midnight, November 6, 1989.

(b) demonstrate its compassion for each state employee whose livelihood may be negatively affected by relocation from Helena by offering an "early retirement" program that provides a pension equal to the employee's current annual salary for a period of 30 years, at which time the normal state retirement compensation must be paid. The same offer must be made to owners and employees of other Helena businesses that choose not to relocate.

(c) deliver to the Secretary of State by 5 p.m., November 7, 1989, an insurance policy or bond in an amount equal to 30 times the annual salary of 82.7% of the total number of state employees, which is the percentage of state employees based in Helena;

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(d) recognize its responsibility to the financial health of the entire state by guaranteeing in a notarized letter of intent, signed by the corporate executive officers of private businesses, that new private sector businesses shall occupy all office space vacated by the transfer of state personnel;

(e) affirm its commitment to Montana's future by designing at its own expense a new "Capitol Complex" within its borders and by constructing buildings of modern design of the finest materials to acknowledge the value of state government to future generations. Building plans and designs must be presented to the Governor for approval no later than November 8, 1989.

(f) have the option, after the election, to respectfully decline the honor and negotiate with the Helena Centennial Committee for a permanent acknowledgment of the election results. A suitable commemoration must be presented to the community that received the majority of votes cast at the election, and a gala reconciliation party must be hosted by the community that received fewer votes within 30 days of the election, at a site to be chosen by that community.

BE IT FURTHER RESOLVED:

(1) That normal balloting procedures provided in Title 13, MCA, be temporarily suspended, and that the centennial committee of each community be authorized to determine the procedures for registering eligible voters, distributing ballots, and determining polling sites and times for the primary election to be held June 1, 1989, and the general election to be held November 6, 1989.

(2) That ballots for both the primary and general elections be sold at a rate determined by the centennial committee in each community as a fair and honest fee that is representative of the actual value of the vote in each community.

(3) That revenue generated through the creative and dedicated efforts of the centennial committees remain under the jurisdiction of each committee to fund projects held to promote the Centennial of the State of Montana.

Passed March 23, 1989.

## SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNOR TO JOIN WITH THE CITIZENS OF THE STATE OF MONTANA AND THE HEADS OF THE VARIOUS DEPARTMENTS OF STATE GOVERNMENT TO PAUSE ON JUNE 14, 1989, TO RECITE THE PLEDGE OF ALLEGIANCE AND TO HONOR THE FLAG WHICH IS OUR SYMBOL OF FREEDOM AND DEMOCRACY IN THE UNITED STATES.

WHEREAS, June 14 is National Flag Day, which is a day set aside to honor the flag and to show our patriotism as a free nation and as citizens of the United States and the State of Montana; and

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WHEREAS, the National Flag Day Foundation was created, chartered, and approved by the United States Congress to develop and promote the Pause for the Pledge Program, which is a nationwide program with ceremonies and activities at Fort McHenry in Baltimore, Maryland; and

WHEREAS, the State of Montana, in conjunction with the Governor's office and the Office of Public Instruction, with participation by school districts throughout the State, will select and send a high school student to Baltimore, Maryland, to participate in the Pause for the Pledge Program during the week of June 14 to represent Montana in this national celebration.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the members of the Senate and House of Representatives join with the Governor and encourage citizens of Montana and the department heads of state agencies to set aside one minute on June 14, 1989, for the Pause For The Pledge Program to allow individuals to recite the Pledge of Allegiance and encourage them to participate in their local community's programs honoring National Flag Day and the Pause for the Pledge Program.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the publishers of each newspaper in the State of Montana and that the Governor send copies of this resolution to the department heads of state agencies in an effort to encourage the participation of all citizens of the State of Montana in this very important Pause for the Pledge Program.

Passed March 17, 1989.

## SENATE JOINT RESOLUTION NO 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS TO PROVIDE ACCESS TO THE ASSOCIATE OF APPLIED SCIENCE DEGREE FOR APPROPRIATE PROGRAMS; AND TO ENCOURAGE THE BOARD OF REGENTS TO ALLOW THE UNITS OF THE UNIVERSITY SYSTEM TO PROVIDE FOR TRANSFERABILITY OF APPROPRIATE CREDITS FROM VOCATIONAL-TECHNICAL CENTER COURSES.

WHEREAS, the Montana Vocational-Technical Center System, now governed by the Montana Board of Regents, makes a valuable contribution to the public education system in Montana and the students who graduate from the five centers make a valuable contribution to employment needs in the state; and

WHEREAS, a student who completes credits at a center should have the opportunity to transfer any appropriate credits to a unit of the Montana University System if a course offering at the unit is the same or comparable; and

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WHEREAS, a student who completes a 2-year center program for which an associate of applied science degree is appropriate deserves to be awarded such a degree, as degree status is often a prerequisite for taking licensing examinations, for initial employment in a field, or for advancement in employment, and without such a degree, the student lacks the advantages and recognition granted a student who completes a similar education at a unit of the Montana University System or at a Montana community college or in another state; and

WHEREAS, it is becoming common within the following fields to require an associate degree for employment in the field: 2-year nurses' training, respiratory therapy, electronics technology, fire science programs, culinary arts, computer programming, and, most critically, the field of legal assisting, in which graduates must compete with graduates of other 2-year programs for entry level jobs; and

WHEREAS, in most states in the West, an associate degree is awarded to those who complete a 2-year program in the aforementioned areas; and

WHEREAS, the student governments of the five vocational-technical centers urge that the centers be granted the authority to award appropriate degrees for completion of 2-year programs and that the units of the University provide for transfer of appropriate credits.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Regents be encouraged to allow the units of the University System to accept credits from appropriate courses completed at a vocational-technical center.

BE IT FURTHER RESOLVED, that the Board of Regents be encouraged to provide, through the vocational-technical centers and the units of the University System, for the award of appropriate degrees to students who have successfully completed 2-year vocational-technical programs.

Passed March 8, 1989.

## SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE PERMANENT DISPLAY OF A MONTANA STATEHOOD CENTENNIAL BELL IN AN APPROPRIATE LOCATION IN THE CAPITOL.

WHEREAS, the State of Montana will celebrate its 100th birthday on November 8, 1989; and

WHEREAS, a statewide bell-ringing project has been sanctioned by the Montana Statehood Centennial Commission, encouraging the ringing of school, church, fire, and individual bells on November 8, 1989, at 10:40

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a.m., the exact minute when President Benjamin Harrison signed the proclamation declaring Montana the 41st state of the union; and

WHEREAS, as part of this project, it would be appropriate to place a representative historic Montana bell on permanent display in the Capitol; and

WHEREAS, a historic Montana bell in excellent condition has been located and will be donated by the Brent Bliss family in honor of Elmer B. Bliss; and

WHEREAS, all expenses associated with permanently displaying the bell in the Capitol, including building a frame, transporting and installing the bell, and providing a plaque noting the exact minute and date that Montana became a state and acknowledging the benefactors and sponsors of the project, will be funded by private sources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature authorizes the permanent display of a Montana statehood centennial bell in an appropriate location in the Capitol, preferably on the south balcony overlooking the rotunda, to honor the 100th birthday of the State of Montana.

Passed March 6, 1989.

## SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO GRANT FULL VETERANS' BENEFITS TO CANADIAN FIRST SPECIAL SERVICE FORCE MEMBERS NOW LIVING IN THE UNITED STATES.

WHEREAS, Montana's Fort Harrison was the initial training site for the First Special Service Force; and

WHEREAS, the "Force" was a combination of United States Army and Canadian troops that fought under United States command, in United States battle zones, wearing United States uniforms; and

WHEREAS, the "Force" distinguished itself as a superior United States combat unit; and

WHEREAS, many Canadian members of the "Force" who returned to Montana following World War II were denied United States veterans' benefits.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the 51st Montana Legislature encourage the United States Congress to grant full veterans' benefits to Canadian First Special Service Force members now living in the United States.

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(2) That the Secretary of the Senate send copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Montana Congressional Delegation.

Passed March 6, 1989.

# SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE U.S. CONGRESS AND THE U.S. DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE (USDA/APHIS), TO SUPPORT, THROUGH APPROPRIATE FUNDING, MONTANA'S AND OTHER WESTERN STATES' RESEARCH EFFORTS TO PROVIDE REQUIRED DATA TO THE ENVIRONMENTAL PROTECTION AGENCY (EPA) TO MAINTAIN CERTAIN RODENTICIDE REGISTRATIONS.

WHEREAS, a U.S. District Court ordered the EPA to temporarily cancel registrations for above-ground uses of strychnine; and

WHEREAS, under a separate action the EPA has issued an intent to suspend the rodenticide uses of strychnine and Compound 1080 to registrants for failure to meet data call-in requirements; and

WHEREAS, these actions will leave Montana and other Western States without effective rodenticides to control agriculturally damaging species, such as the Columbian ground squirrel, the Richardson ground squirrel, and the black-tailed prairie dog; and

WHEREAS, the costs to pursue data collection to maintain strychnine and Compound 1080 registrations are beyond the means of most states; and

WHEREAS, while the data required by EPA through the registration process is designed to provide information on the efficacy of the product, studies on environmental fate, nontarget hazards, and fish and wildlife are also required to ensure that the product will have a minimal impact on the environment; and

WHEREAS, the USDA/APHIS Denver Wildlife Research Center has the leadership, manpower, and expertise necessary to provide the required data but lacks the necessary funding; and

WHEREAS, Montana and other western states could assist in this effort with in-kind services; and

WHEREAS, because the USDA estimates that rodents cause $400 million in damage annually in the United States, effective control tools are needed to curtail these damages.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That Montana's U.S. Congressional Delegation and USDA/APHIS be urged to support funding for the Denver Wildlife Research Center to conduct research to provide the necessary data to the EPA to maintain the registrations of strychnine and Compound 1080 for rodenticide purposes.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation and the Secretary of the United States Department of Agriculture.

Passed March 6, 1989.

## SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE PERMANENT DISPLAY OF BRASS PLAQUES TO COMMEMORATE MONTANA'S CENTENNIAL.

WHEREAS, on November 8, 1989, Montana will celebrate the 100th anniversary of admission to the Union; and

WHEREAS, Montana's Centennial celebration, which began in November of 1988, has given the people of Montana the opportunity to reflect on the state's great heritage, its progress to date, and its hopes for the future; and

WHEREAS, the Montana Statehood Centennial Office intends to bury a time capsule on the State Capitol grounds; and

WHEREAS, it is appropriate that the Centennial and time capsule be memorialized in the State Capitol and at the site of the time capsule.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature gives its authorization to:

(1) permanently display in the State Capitol a brass plaque commemorating Montana's Centennial at a location and with an inscription to be determined by the Capitol Building and Planning Committee, the Lieutenant Governor or his designated representative, and a member of the Statehood Centennial Commission appointed by the chairman of the Commission; and

(2) permanently display at the site of the Centennial time capsule a brass plaque commemorating the burial of the capsule with an inscription approved by the Capitol Building and Planning Committee, the Lieutenant Governor or his designated representative, and a member of the Statehood Centennial Commission appointed by the chairman of the Commission.

Passed April 7, 1989.

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# SENATE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING AND COMMENDING GROUPS AND PROJECTS THAT PROMOTE RECYCLING AND LITTER ABATEMENT.

WHEREAS, the State of Montana is gifted with unparalleled natural beauty and bountiful natural resources; and

WHEREAS, the citizens of Montana justifiably take pride in the beauty and clean environment of their state; and

WHEREAS, the continued attractiveness of Montana appeals to visitors from other states and countries around the world; and

WHEREAS, the citizens and businesses of Montana have a joint interest in increasing the natural beauty and appeal of the state; and

WHEREAS, litter on our beautiful state's highways, streets, streams, and public lands is unsightly and unwanted; and

WHEREAS, the United States is facing an increasingly drastic solid waste disposal crisis; and

WHEREAS, Montanans are currently fortunate enough to have low waste disposal costs compared to other states, but those costs are expected to increase dramatically as communities fill up existing landfills and must open new costly ones; and

WHEREAS, recyclable material, such as glass, aluminum, plastic, steel, and newsprint and other paper goods, makes up a substantial portion of the solid waste in landfills; and

WHEREAS, the citizens of Montana have a long heritage from the early settlers of the state that stressed the importance of using and reusing each item to its fullest degree; and

WHEREAS, the recycling and reuse of materials benefit citizens now and in the future; and

WHEREAS, many of the state's citizens voluntarily recycle numerous materials, thereby earning money and alleviating pressure on our state's landfills; and

WHEREAS, citizen cleanup efforts are a significant tribute to our state in its centennial year; and

WHEREAS, communities have an interest in promoting and improving recycling at all opportunities; and

WHEREAS, communities are in the position of directly assisting and increasing recycling through education and assistance to all members of the community; and

WHEREAS, community landfills, as the destinations of communities' solid waste, are the best locations for implementing comprehensive communitywide recycling; and

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WHEREAS, the community-spirited citizens of Montana can multiply their efforts to improve the appearance of our state's roadways and streams in a cooperative program; and

WHEREAS, local communities can and should increase the level of local recycling to reduce solid waste disposal volume and costs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That during this year of celebration of Montana's first century of statehood, all Montanans who volunteer their time and efforts to programs that will keep Montana clean and beautiful be commended.

BE IT FURTHER RESOLVED, that all Montana citizens and businesses be urged to participate in similar recycling and beautification programs.

BE IT FURTHER RESOLVED, that all Montana communities be urged to promote and encourage recycling.

BE IT FURTHER RESOLVED, that all Montana communities be encouraged to study means of sorting recyclable materials.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to all County Commissioners, Mayors, City Managers, and City Council Members in Montana.

Passed March 29, 1989.

## SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING AND COMMENDING PHILANTHROPIC ACTIVITIES IN MONTANA; SUPPORTING THE NEWLY FORMED MONTANA COMMUNITY FOUNDATION AND ITS GOAL OF BETTERING MONTANA COMMUNITIES; AND ENCOURAGING ALL MONTANANS TO GIVE THEIR SUPPORT TO THE MONTANA COMMUNITY FOUNDATION AND TO MEET THE CHALLENGE GRANTS AWARDED TO THE MONTANA COMMUNITY FOUNDATION.

WHEREAS, the citizens of Montana have a strong tradition of contributing generously to worthwhile charitable and philanthropic causes that improve their communities, their state, and the lives of individuals; and

WHEREAS, since 1980, total government support for charitable institutions and organizations has decreased $30 billion; and

WHEREAS, while charitable giving by private individuals, corporations, and foundations nationwide has increased dramatically since 1980, the needs of individuals have also increased during the same period; and

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WHEREAS, government neither can nor should meet all needs, especially since government does not have the financial means to provide lasting funds to meet future needs; and

WHEREAS, community foundations are an American creation and are the fastest growing sector of philanthropy today, with over 300 foundations in communities all across the United States, with assets of over $4 billion; and

WHEREAS, community foundations are tax-exempt organizations formed to attract endowment funds and to distribute their earnings for community betterment; and

WHEREAS, community foundations are stewards of private contributions, which are invested to meet the challenges and opportunities of changing community needs; and

WHEREAS, community foundations augment the effectiveness of existing charitable organizations and have proven to be a positive benefit because they work in cooperation, not in competition, with other charitable organizations; and

WHEREAS, the Montana Community Foundation has been formed on the eve of our state's centennial celebration by a diverse group of civic-minded Montanans; and

WHEREAS, the Montana Community Foundation will stimulate the establishment of endowments to serve communities now and for the future and will address community needs by providing leadership and resources through a unique statewide focus and mission; and

WHEREAS, earnings of these endowments will be distributed by a volunteer board of directors, composed of community leaders representing various sectors, for community needs in areas such as education, arts and culture, social services, economic development, health, and the environment; and

WHEREAS, the Montana Community Foundation has received generous challenge grants from the McKnight Foundation for $1.5 million and the Northwest Area Foundation for $500,000, which must be matched by $3.5 million from the Montana Community Foundation by July 1, 1991; and

WHEREAS, significant support has been provided by the national Council on Foundations, with special thanks to former executive director of the Council, Eugene Struckoff, who is now executive director of the Community Foundation of the Greater Baltimore Area and special consultant to the Council, and whose vision, advice, and tireless efforts on behalf of the Montana Community Foundation are of immeasurable benefit.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That during this year of celebration of Montana's first century of statehood, we commend all Montanans who support generously our state's philanthropic and charitable organizations, and we urge them to redouble

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their efforts in the coming years to help ensure a bright second hundred years for our state, our communities, and our citizens.

BE IT FURTHER RESOLVED, that we support the Montana Community Foundation and its goal of improving Montana communities through private voluntary contributions.

BE IT FURTHER RESOLVED, that we express appreciation to the Northwest Area Foundation for a grant of $250,000 to the Montana Community Foundation for operating funds until July 1, 1991, and to the Charles Stewart Mott Foundation for a grant of $70,000 for start-up and operating costs to help the Montana Community Foundation meet the challenge grants of the McKnight and Northwest Area Foundations.

BE IT FURTHER RESOLVED, that we urge all Montanans to support the Montana Community Foundation and meet the challenge grants of the McKnight and Northwest Area Foundations by contributing to the Montana Community Foundation.

BE IT FURTHER RESOLVED, that the Secretary of State mail copies of this resolution to the 200 largest charitable foundations in the United States.

Passed March 18, 1989.

## SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING FIREARMS SAFETY TRAINING FOR SCHOOL-AGE CHILDREN IN MONTANA.

WHEREAS, of the 50 states, Montana has the second highest percentage of residents purchasing hunting licenses; and

WHEREAS, as many as 85% of the households in Montana are estimated to contain firearms; and

WHEREAS, improper and unsupervised use or handling of firearms by children can be hazardous; and

WHEREAS, a small, but unfortunate and preventable, number of children in Montana are the victims of unnecessary firearms accidents each year; and

WHEREAS, the right of Montana citizens to keep and bear arms is a right guaranteed under both the Montana Constitution and the United States Constitution; and

WHEREAS, it is expected that Montana citizens will continue to have a high level of private ownership of firearms; and

WHEREAS, safety training for other life-hazard or injury-hazard topics, such as fire escape, is currently conducted in elementary schools; and

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WHEREAS, widespread firearms safety training for school-age children could result in a significant reduction in firearms-related injuries and deaths among Montana children.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature encourage the provision of firearms safety training for school-age children in Montana through cooperation between school districts and appropriate local organizations that represent the shooting and sporting community in Montana. The cooperation should include:

(1) the dissemination of information on firearms safety;

(2) information on the availability of firearms safety training programs offered by the appropriate local organizations; and

(3) an offer by school districts of use of a school facility during after-school hours for any firearms safety training program offered by an appropriate local organization that represents the shooting and sporting community.

Passed March 17, 1989.

## SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING RIMFIRE SHOOTING COMPETITION IN SECONDARY SCHOOLS OF MONTANA.

WHEREAS, Montana has a long and honorable tradition of appropriate firearms use; and

WHEREAS, firearms and shooting are a common ingredient of life in Montana; and

WHEREAS, of the 50 states, Montana has the second highest percentage of residents purchasing hunting licenses; and

WHEREAS, as many as 85% of the households in Montana are estimated to contain firearms; and

WHEREAS, the right of Montana citizens to keep and bear arms is a right guaranteed under both the Montana Constitution and the United States Constitution; and

WHEREAS, it is expected that Montana citizens will continue to have a high level of private ownership of firearms; and

WHEREAS, a number of Olympic shooters, disproportionate to the size of Montana's population, have come from Montana; and

WHEREAS, the shooting sports are acceptable competitive activities throughout the world; and

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WHEREAS, the shooting sports are not commonly recognized in the high schools of Montana as acceptable competitive activities; and

WHEREAS, the shooting sports in Montana currently enjoy a safety record that cannot be matched by any other organized sport; and

WHEREAS, the shooting sports are an area of competition in which the small rural Montana high schools can compete on equal footing with the large urban Montana high schools; and

WHEREAS, the shooting sports are an area of competition that allows excellence and meaningful participation, regardless of gender or certain physical handicap.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Legislature encourage the adoption of rimfire shooting competition as an acceptable intramural and interscholastic sport in the high schools of Montana.

(2) That the Montana Legislature encourage the educators and educational administrators of Montana to rely on the expertise and resources of the shooting and sporting community in Montana to aid in implementing a program of rimfire shooting competition in and among the high schools of Montana.

(3) That the Montana Legislature expect schools to rely on the private resources of the Montana shooting community, rather than public funds, for the recommended implementation of the program.

(4) That the Montana Legislature encourage the educators and educational administrators of Montana, together with the Montana High School Association, to design and implement appropriate rimfire shooting competition in and among the high schools of Montana.

Passed March 17, 1989.

## SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO DIRECT THE APPROPRIATE FEDERAL AGENCIES TO INVESTIGATE PROBLEMS ARISING FROM THE SERVICING OF LOANS BY THE PURCHASER IN THE SECONDARY MARKET AND TO DETERMINE WHAT ACTION MAY BE TAKEN OR FEDERAL LEGISLATION PROPOSED TO REMEDY LOAN SERVICING PROBLEMS.

WHEREAS, the Senate and the House of Representatives of the State of Montana have received testimony and complaints regarding the servicing of loans originating in the State of Montana and sold into the secondary market to purchasers outside the State of Montana; and

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WHEREAS, these complaints relate to loan servicing, such as payment of taxes and insurance, reserve accounts, changes in the reserve accounts, payment of insurance proceeds, and related matters; and

WHEREAS, the sale of residential loans into the secondary market is a primary source of lending capital for the State of Montana; and

WHEREAS, these loans, for the most part, are purchased by buyers outside the State of Montana; and

WHEREAS, the State of Montana lacks jurisdiction to address these loan servicing problems; and

WHEREAS, the Congress of the United States and the federal regulatory agencies may act on a nationwide basis in response to the complaints of borrowers who have had problems with the servicing of loans by out-of-state purchasers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Congressional Delegation be requested to ascertain from the appropriate federal regulatory agencies the extent and nature of the problems encountered by borrowers when obtaining information and correcting errors and omissions regarding the servicing of their loans, payment of taxes and insurance, collection of insurance proceeds, and related matters.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation be requested to determine whether the appropriate federal regulatory agencies presently have authority to address these problems and whether federal legislation is necessary to control the activities of some purchasers of loans and the servicing of the loans after purchase.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation.

Passed April 1, 1989.

## SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO CONTINUE FUNDING OF MONTANA AGRICULTURAL AND RANGE EXPERIMENT STATIONS.

WHEREAS, the National Agricultural Research and Extension Users Advisory Board presented its 1989 Food and Agriculture Sciences Appraisal Report to the President and Congress; and

WHEREAS, that report recommended closure or consolidation of agricultural research stations during fiscal year 1989; and

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WHEREAS, the report further recommended closure of all small agricultural research stations and maintenance of only the four regional agricultural laboratories during fiscal year 1990; and

WHEREAS, in response to the recent drought, the range research station at Fort Keogh, near Miles City, Montana, is conducting crucial drought research on range recovery; and

WHEREAS, continued operation of Montana's agricultural experiment stations is essential to the state agricultural industry.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress be strongly urged to continue funding of Montana agricultural and range experiment stations at current levels.

BE IT FURTHER RESOLVED, that the Secretary of the Senate send a copy of this resolution to the Chairman of the United States Senate Agriculture Committee, the Chairman of the United States House of Representatives Agriculture Committee, the Secretary of the United States Department of Agriculture, and each member of the Montana Congressional Delegation.

Passed April 11, 1989.

## SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY THE REGULATION AND MANAGEMENT OF SOLID WASTE AND RELATED EFFECTS ON GROUND WATER QUALITY AND AIR QUALITY; AND REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE 52ND LEGISLATURE.

WHEREAS, the 51st Legislature has considered many complex bills relating to the regulation and management of solid wastes, including landfill regulation and associated ground water monitoring, infectious waste disposal, waste incineration and incinerator emissions, and fee structures and funding mechanisms for solid waste management programs; and

WHEREAS, the United States Environmental Protection Agency has recently released proposed minimum federal regulations for landfills, prompted by studies that demonstrated significant nationwide ground water pollution caused by substances leaching from landfills; and

WHEREAS, these proposed regulations, if adopted as drafted, would have major effects on the management of solid wastes in Montana, since Montana has not applied the technical and financial resources necessary to ensure that solid waste management is compatible with the public health, safety, and welfare and the environment; and

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WHEREAS, out-of-state waste disposal interests are increasingly investigating Montana as a potential site for disposal of waste generated outside Montana's borders; and

WHEREAS, there are currently few state regulations and little oversight of the importation of solid waste into Montana; and

WHEREAS, the burning of plastic and other materials in solid waste incinerators is a source of toxic air pollutants which, despite their adverse effects on human health and the environment, are poorly understood and little regulated by the state or federal government; and

WHEREAS, Montana statutes presently exempt from licensing certain privately owned landfills, and this exemption provides a significant gap in our ability to ensure that solid waste management adequately protects the public health, safety, and welfare and the environment; and

WHEREAS, opportunities exist to explore new methods of integrated waste management, including waste minimization, source separation, recycling, incineration, and other innovative techniques; and

WHEREAS, financing strategies for continued, improved, and cost-effective management of solid wastes must be explored to effectively respond to increased federal activity and needed changes to protect the health and environment of Montana citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Environmental Quality Council be directed to give priority to and study the regulation and management of solid waste and its effects on ground water quality.

(2) That the study include review of:

(a) the effects on Montana communities of the proposed federal regulation of landfills;

(b) programs to regulate the disposal of infectious waste in Montana;

(c) regulation of the importation of solid waste into Montana;

(d) actual and potential ground water pollution resulting from solid waste disposal;

(e) new opportunities for waste minimization, source separation, recycling, incineration, and integrated waste management;

(f) strategies for developing and financing the most cost-effective and environmentally sound federal, state, local, and private response to Montana's solid waste management needs;

(g) the integration of solid waste management programs with other ground water protection programs;

(h) differences in the regulation of public and private landfills, including the effects on the public health, safety, and welfare and the environment of the existing exemption from licensing for certain landfills; and

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(i) the effects of solid waste incineration on Montana air quality and public health.

(3) That the Environmental Quality Council consult with federal, state, and local officials, industries, citizens, and other persons or groups with expertise in the regulation of solid waste.

(4) That the Environmental Quality Council report its findings and recommendations to the 52nd Legislature by November 1, 1990.

Passed April 19, 1989.

## SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF CERTAIN STATE LOAN PROGRAMS TO REVIEW THE PURPOSES, OBJECTIVES, AND ADMINISTRATION OF THOSE PROGRAMS, TO DETERMINE THE NECESSITY FOR THE PROGRAMS, TO ASSESS THE EFFECTIVENESS OF THE PROGRAMS, AND TO DETERMINE IF CERTAIN PROGRAMS CAN BE MODIFIED, EXPANDED, ELIMINATED, OR CONSOLIDATED; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 52ND LEGISLATURE.

WHEREAS, the Legislature of the State of Montana has established at least a dozen programs that lend state funds for private activities to support or stimulate the economy of the state; and

WHEREAS, administration of these programs is divided among three departments without coordination of the purposes or results of the programs; and

WHEREAS, wise commitment of Montana's limited financial resources to programs that are effective in generating economic activity depends on the Legislature's access to reliable information on the operation and performance of activities that lend state funds to private entities; and

WHEREAS, a coordinated review of these state lending programs is needed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee be assigned to study the need for and the performance and effectiveness of certain state lending programs, including but not limited to:

(1) the growth through agriculture program, the agricultural development loan program, and the rural development program, administered by the Department of Agriculture;

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(2) the water development loan program, the renewable resource development program, and the rangeland improvement loan program, administered by the Department of Natural Resources and Conservation;

(3) the following programs administered by the Department of Commerce:

(a) the Board of Housing's single-family bond program, mortgage credit certificate program, multi-family bond program, and low-income tax credit program;

(b) the Board of Investments' coal tax loan program and mortgage investment program;

(c) the Health Facilities Authority's issuance of revenue bonds and notes to finance capital projects for public and private nonprofit health facilities;

(d) the Science and Technology Alliance's research and development financing program and seed capital program; and

(e) the Local Government Assistance Division's community block grant program; and

(4) the airport lending program, administered by the Department of Administration.

BE IT FURTHER RESOLVED, that in addition to reviewing the quality of the management of the programs, analyzing the financial soundness of the programs, and determining if the programs are achieving the purposes for which they were created, the Legislative Audit Committee determine if certain of the programs can be coordinated or consolidated to more nearly achieve their objectives.

BE IT FURTHER RESOLVED, that the Legislative Audit Committee determine if the needs for the programs still exist or if elimination of certain programs may be achieved without deleterious impact on the state's economy.

BE IT FURTHER RESOLVED, that the Legislative Audit Committee report in writing to the 52nd Legislature and in this report, if the committee determines that any of the programs subjected to review need to be modified, expanded, eliminated, coordinated, or consolidated, submit proposed legislation to implement its recommendations.

Passed April 19, 1989.

## SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE EFFECTS OF BUSINESS TAX INCENTIVES IN MONTANA ON PROMOTING ECONOMIC DEVELOPMENT, DIVERSITY, AND STABILITY; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 52ND LEGISLATURE.

WHEREAS, national reports of Montana's poor business climate have encouraged the perception that Montana's tax structure, among other things, impedes economic development in the state; and

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WHEREAS, in prior legislative sessions, the Montana Legislature has enacted certain tax incentive measures designed to promote economic development; and

WHEREAS, sections 15-6-135 and 15-24-1402, MCA, provide incentives for economic development in the form of lower property tax rates for new and expanding industries; and

WHEREAS, section 15-6-135, MCA, provides lower property tax rates for research and development firms, and section 15-31-103, MCA, exempts research and development firms from income taxation during the first 5 years of operation; and

WHEREAS, sections 15-31-124 through 15-31-127, MCA, provide additional incentives for economic development in the form of tax credits for new or expanding industries that offer increased job opportunities in Montana; and

WHEREAS, section 15-33-106, MCA, exempts from individual and corporation license taxation any capital gains or dividend income realized from an investment in a small business investment company; and

WHEREAS, section 90-8-202, MCA, allows a corporation an income tax credit for investing in certified Montana capital companies in order to encourage the formation of venture capital in the state; and

WHEREAS, numerous credits, exemptions, and tax rate reductions have been implemented in an attempt to revitalize Montana's extractive industries; and

WHEREAS, carefully designed and targeted tax incentives may be significant considerations in business location and expansion decisions when used in conjunction with other elements of sound economic development strategies; and

WHEREAS, Montana's business tax incentives must be objectively evaluated to assess their importance in decisions to create new businesses and new jobs and in attracting businesses to Montana and encouraging existing businesses to expand.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Revenue Oversight Committee study the effectiveness of business tax incentives in promoting economic development in Montana.

(2) That the committee in its study:

(a) evaluate the criteria and methods used, especially as they relate to taxes, by private organizations that rate the business climate of the states to determine whether they present an accurate portrayal of Montana's business climate;

(b) provide a comprehensive summary of the various business tax incentives in Montana, including tax credits and exemptions, special property tax treatment, and tax rate reductions;

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(c) determine the economic sectors or industries where tax incentives have been targeted;

(d) analyze whether tax incentives:

(i) are generally an effective tool in promoting economic development and stability in the state;

(ii) have had any effect on economic growth; or

(iii) are a drain on state revenue, in the form of tax subsidies, without accomplishing their intended objectives;

(e) evaluate tax incentives used in other states, especially those states with similar socioeconomic and demographic characteristics as Montana, in attracting new businesses and encouraging existing businesses to expand;

(f) examine whether general tax reform or selectively targeted tax incentives are the most effective means of promoting economic development; and

(g) discuss any other relevant factors that influence economic development.

(3) That the committee report the findings of the study and provide options for consideration to the 52nd Legislature.

Passed April 20, 1989.

## SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY THE PROTECTION AND MANAGEMENT OF GROUND WATER QUALITY; AND DIRECTING THE ENVIRONMENTAL QUALITY COUNCIL TO REPORT ITS FINDINGS OF THE STUDY TO THE 52ND LEGISLATURE.

WHEREAS, Montanans are increasingly dependent on ground water for domestic, agricultural, and industrial uses; and

WHEREAS, Montanans have expressed a strong interest in protecting the quality of their ground water; and

WHEREAS, the 51st Montana Legislature is considering major new ground water quality initiatives to:

(1) establish an agricultural chemical ground water protection program;

(2) require ground water monitoring at landfills;

(3) establish licensing, permitting, and fee requirements for underground storage tanks and to create a multimillion dollar fund to clean up tank leaks;

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(4) more closely regulate the use of cyanide by small miners; and

(5) otherwise respond to continuing challenges to the effective management of ground water resources; and

WHEREAS, these initiatives are anticipated to result in improvements to Montana's environment and in new responsibilities for citizens and state agencies; and

WHEREAS, there are a number of other state and federal programs affecting ground water quality in Montana; and

WHEREAS, it is desirable for the Montana Legislature to review these various programs to determine the best means to meet the needs of the State of Montana and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Environmental Quality Council be assigned to study:

(1) existing programs in Montana and other states for protecting ground water quality;

(2) the implementation of new legislative initiatives on ground water management enacted by the 51st Montana Legislature;

(3) federal requirements that affect ground water quality programs in Montana; and

(4) other necessary responses to ground water protection and management challenges identified by the Environmental Quality Council.

BE IT FURTHER RESOLVED, that the Environmental Quality Council report the findings of the study to the 52nd Legislature, develop recommendations on ground water quality programs, and, if appropriate, present options for legislative consideration to implement these recommendations.

Passed April 21, 1989.

## SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE PROVISION OF ADULT AND YOUTH DETENTION SERVICES; AND REQUIRING THE COMMITTEE TO REPORT ITS FINDINGS TO THE 52ND LEGISLATURE.

WHEREAS, one of the most critical issues facing local governments in Montana is the provision of adult and youth detention services; and

WHEREAS, the federal Juvenile Justice and Delinquency Prevention Act mandates total removal of juveniles from adult detention facilities and

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requires states to demonstrate progress toward compliance with this mandate; and

WHEREAS, local taxpayers have repeatedly demonstrated, through their defeat of bond issues, their unwillingness to finance jail renovation, expansion, or replacement projects.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to:

(1) collect data on the current status of municipal and county adult and youth detention services in Montana;

(2) determine the future need for adult and youth detention services in the state;

(3) define the role of the state in planning, financing, and administering adult and youth detention services;

(4) explore options for meeting the federal mandate concerning removal of juveniles from adult facilities, including alternatives to detention such as shelter and foster care; and

(5) identify mechanisms for funding adult and youth detention services, including potential revenue sources.

BE IT FURTHER RESOLVED, that the committee report its findings and options for legislative consideration to the 52nd Legislature.

Passed April 21, 1989.

## SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE DIMINISHING SUPPLY OF RAW LOGS AVAILABLE FOR WOOD PROCESSING PLANTS; SUPPORTING A BAN ON THE EXPORT OF RAW LOGS FROM THE UNITED STATES; AND REQUESTING THE STATE OF IDAHO TO RECONSIDER AND EITHER REPEAL OR AMEND A LAW RESERVING CERTAIN RAW LOGS FOR PROCESSING WITHIN THAT STATE.

WHEREAS, the 1989 Idaho State Legislature passed and the Governor of Idaho signed the Timber Supply Stabilization Act of 1989, which reserves for Idaho wood processing plants 95% of the timber cut from state-owned lands; and

WHEREAS, although the Idaho act is aimed at reducing the flow of raw logs out of the United States, it also restricts the availability of those logs to wood processing plants in neighboring states such as Montana; and

WHEREAS, Montana places no restrictions on the flow of raw logs harvested within its borders to Idaho or other states; and

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WHEREAS, the volume of timber available for harvest and for processing has declined substantially in the past decade, which has resulted in some Montana wood processing plants relying upon raw logs harvested in Idaho to assure a reliable supply of raw materials; and

WHEREAS, interruption of the flow of raw logs from Idaho could cause slowing or cessation of operations at Montana wood processing plants with attendant severe effects on the state's economy; and

WHEREAS, export of raw logs diminishes the supply available to United States wood processing plants and hastens the eventual exhaustion of the timber supply; and

WHEREAS, preservation of the economic viability of the timber industry requires that the western states cooperate in addressing the subject of timber supply and related issues; and

WHEREAS, stimulation of the economy of western Montana depends upon the continued availability of raw materials for wood processing plants.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That legislation prohibiting the export of raw logs to foreign processing plants in order to preserve this country's natural resource base for the benefit of the people of the United States is necessary and laudable, but those laws should not restrict the interchange of raw materials across internal boundaries within the United States because that restriction will cause economic hardship for neighboring states.

(2) That the Legislature and the Governor of the State of Idaho be requested to reconsider and either repeal or amend the provisions of the Timber Stabilization Supply Act of 1989 to eliminate obstacles to the flow of raw materials across state boundaries.

(3) That the Secretary of State send copies of this resolution to the Governor and the leaders of the Senate and the House of Representatives of the State of Idaho, to the Governor of the State of Montana, and to the members of Montana's Congressional Delegation.

Passed April 21, 1989.

## HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE UNITED STATES PORT OF ENTRY STATION AT ROOSVILLE BE OPEN 24 HOURS A DAY.

WHEREAS, U.S. Highway 93 is the only route from the State of Montana into the Province of British Columbia; and

WHEREAS, the nearest alternate highway crossing of the boundary between the United States and the Province of British Columbia is located in Idaho and is accessible only after a long and circuitous journey; and

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WHEREAS, the government of Canada operates its port of entry station at Roosville 24 hours every day of the year, while the government of the United States closes its port of entry station at Roosville between the hours of midnight and 8 a.m. each day; and

WHEREAS, the discrepancy between the hours of operations of the port of entry stations on opposite sides of the border at Roosville causes confusion, inconvenience, and hardship for the traveling public that must cross the international boundary at that location because entry into Canada is unrestrained, but entry into the United States is legally impossible while the United States port of entry station is closed; and

WHEREAS, the lack of staffing at the United States port of entry station during one-third of each day contributes to serious law enforcement problems concerning illegal crossings; and

WHEREAS, U.S. Highway 93 is a principal avenue of commercial traffic, interruption of which for any period of time seriously impedes economic activity; and

WHEREAS, U.S. Highway 93 is a major thoroughfare of tourist traffic, encouragement of which is a significant component of Montana's effort to stimulate its economy; and

WHEREAS, any restriction of intercourse between the United States and Canada hinders the enhancement of good neighborliness that has long been the distinguishing attribute of the relationship between the two countries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Immigration and Naturalization Service and the United States Customs Service be requested to operate the port of entry station at Roosville 24 hours each day.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor of the State of Montana, the Premier of the Province of British Columbia, the Commissioner of the United States Customs Service, the Commissioner of the Immigration and Naturalization Service, and each member of Montana's Congressional Delegation.

Passed February 28, 1989.

## HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE; AND PROVIDING FOR RETROACTIVE APPLICABILITY.

WHEREAS, it is necessary to establish a pay plan for legislative employees that compensates those employees on a basis similar to other state employees; and

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WHEREAS, it is necessary that legislative employees know of their conditions of employment and that such conditions be uniform for the House of Representatives and Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) (a) That the following legislative employee positions be classified at the grades indicated and be entitled to be paid according to the 1986-87 hourly pay matrix, which does not include insurance, issued by the Department of Administration on May 3, 1985. Because legislative employees receive no additional benefits, 20 cents an hour must be added to the hourly compensation as shown on the pay matrix.

(b) That an employee with no qualifying legislative experience be classified at step 2 of the appropriate grade. A person who has served as a legislator or an employee of the Montana House of Representatives or Senate for at least one-half of a regular session prior to January 1, 1987, is entitled to be advanced one step for each session so served.

Grade 20

Chief Clerk of the House
Secretary of the Senate

Grade 17

Sergeant-at-arms

Grade 14

Chaplain

Grade 13

Assistant Chief Clerk of the House
Assistant Secretary of the Senate
Aide to the Speaker of the House
Aide to the Senate Minority Leader
Aide to the House Minority Leader
Aide to the President of the Senate

Grade 11

Training Coordinator
System Coordinator
Legislative Assistant
Chief Stenographer
Bills Clerk
Journal Clerk
Assistant Sergeant-at-arms
Secretary to the following:

President, Speaker, Secretary of the Senate, Chief Clerk, and Majority and Minority Leaders and Whips in both the House and the Senate

Grade 10

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Bills Coordinator
Assistant Chief Stenographer
Assistant Journal Clerk
Assistant Bills Clerk
Committee Secretary
Bills Distributor
Amendments Coordinator
Legislative Telephone Operator
Status Input Technician

Grade 9

Assistant Bills Coordinator
Assistant Bills Distributor
Assistant Amendments Coordinator

Grade 8

Stenographer

Grade 7

Assistant Status Input Technician
Reading Clerk
Supply Clerk
Posting Clerk
Typist
Security Guard
Doorman

Grade 6

Proofreader
Clerk-typist
Steno Aide

Grade 5

Distribution Clerk
Parking Attendant
Page Supervisor

Grade 3

Committee Aide

Grade 1

Permanent Page
$3.50 an hour
Page

(2) (a) That each employee record the number of hours worked each day on a timesheet provided. A completed timesheet must be turned in each Friday that ends a pay period. Each chamber shall adopt a procedure for review, approval, and collection of the timesheets and for timely filing with the Legislative Council.

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(b) That the Sergeants-at-arms review and approve the timesheets for the following employees: Assistant Sergeants-at-arms, Doormen, Security Guards, Distribution Clerks, and Pages.

(c) That the Speaker and Minority Leader of the House review and approve the timesheets for their employees.

(d) That the Chief Clerk of the House and the Secretary of the Senate review all timesheets and approve those not otherwise provided for.

(3) That the positions classified at Grade 17 and above be exempt from overtime pay. During a regular legislative session, employees in such positions must be paid for 48 hours a week regardless of the number of hours worked. Whenever such employees are preparing for or closing a regular or special session or otherwise working at the direction of their respective presiding officers during an interim, they must be paid for each hour worked at the hourly compensation determined under subsection (1) and their timesheets must be reviewed and approved by their presiding officers.

(4) That the positions classified below Grade 17 be subject to overtime pay. Hours over 40 a week worked by an employee so classified must be compensated at the rate of 1 ½ times the employee's regular hourly wage.

(5) That the legislative employees listed in subsection (1)(b) be considered temporary employees and not entitled to any additional benefits, such as sick leave, vacation leave, holiday pay, time off with pay, health insurance, or longevity allowances. Section 2-18-617(3), MCA, relating to assumption of liability for accrued vacation credits, does not apply to the Legislature and its employees.

(6) That a Chaplain be entitled to be paid for 2 hours for each legislative day served.

(7) That membership in the Public Employees' Retirement System be made available to legislative employees upon written request under the provisions of section 19-3-403(5), MCA.

(8) That the Legislature intend this Joint Resolution to apply to the employees hired to prepare for the 52nd Legislature by the leadership elected at the November 1990 caucuses.

(9) That if state employees are authorized to receive increases by action of the 51st Legislature, the second sentence of subsection (1)(b) of this resolution be replaced by the following: "A person who has served as a legislator or an employee of the Montana House of Representatives or the Senate for at least one-half of a regular session is entitled to be advanced one step for each session served." Employees of the 51st Legislature must be retroactively paid under this provision.

(10) That the Legislature recommend that Legislative Branch Agencies employ session temporary personnel under policies consistent with this resolution.

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(11) (a) That this resolution be effective upon passage and be effective until January 7, 1991.

(b) That this resolution apply retroactively to all employees of the 51st Legislature.

Passed January 31, 1989.

## HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE DISTRICT IX SOFTBALL COMPLEX IN LEWISTOWN BE OFFICIALLY DESIGNATED AS THE SITE OF THE MONTANA SOFTBALL HALL OF FAME.

WHEREAS, in the spring of 1983, the District IX Softball League was awarded the site of the Montana Softball Hall of Fame by the Montana Softball Association; and

WHEREAS, the site in Lewistown, chosen by a steering committee, was subsequently approved by the City-County Airport Board and the Federal Aviation Administration; and

WHEREAS, as of December 1, 1988, approximately $350,000 has been raised through extensive fundraising, including $8,000 from independent donors, a $50,000 grant from the Montana Land and Water Conservation Fund, and pledges by the City of Lewistown and Fergus County for $30,000 and $20,000, respectively, to match the $50,000 grant; and

WHEREAS, the District IX Softball Complex has an expected completion date of June 1, 1989.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the District IX Softball Complex in Lewistown be officially designated as the site of the Montana Softball Hall of Fame.

Passed February 11, 1989.

## HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ACKNOWLEDGING AND SUPPORTING THE MONTANA CENTENNIAL SLED DOG RACE.

WHEREAS, Montana is the home of the longest sled dog race in the lower 48 states; and

WHEREAS, in addition to the Montana Mountain Mushers Club, competitors from all over the United States and Canada will participate in the Montana Centennial Sled Dog Race; and

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WHEREAS, several hundred volunteers, four local snowmobile clubs, and numerous local and national businesses are active in making the Montana Centennial Sled Dog Race a unique source of winter recreation in Montana; and

WHEREAS, the Montana Centennial Sled Dog Race will draw approximately 10,000 spectators and will receive national press coverage; and

WHEREAS, the Montana Centennial Sled Dog Race has received $7,500 from the Montana Centennial Commission and has been officially recognized as a centennial activity.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature encourage and support the Montana Centennial 500-mile sled dog race as a source of winter entertainment that benefits Montana economically, enhances its tourist appeal, and is in keeping with the true pioneer spirit of Montanans.

Passed March 7, 1989.

## HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING OPPOSITION TO FEDERAL EXCISE TAX RATE INCREASES ON BEER, WINE, CIGARETTES, GASOLINE, AND DISTILLED SPIRITS.

WHEREAS, the United States Congressional Joint Committee on Taxation has developed a set of policy options in response to the Congressional budget resolution calling for federal tax rate increases over the next 3 years; and

WHEREAS, these policy options have identified the following excise tax rate increases as one potential source of federal tax increases:

(1) beer, 49 cents per six-pack;

(2) wine, 52 cents per bottle;

(3) cigarettes, 16 cents per pack;

(4) gasoline, 5 cents per gallon; and

(5) distilled spirits, $2.50 per proof gallon; and

WHEREAS, federal excise taxation is regressive taxation; and

WHEREAS, Montana ranks 47th in the nation in personal income, with an average personal income of $15,568 per person in 1987; and

WHEREAS, increases in regressive federal excise tax rates will therefore place a greater burden on individuals in the state of Montana in comparison to individuals in the majority of other states; and

WHEREAS, beer, wine, cigarettes, gasoline, and distilled spirits are relatively price-inelastic, and increasing federal excise tax rates on these products can be expected to result in a decline in product sales; and

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WHEREAS, the Montana Revenue Estimating Advisory Council estimates product sales declines over the next 2 years in cigarettes (6 million packs, or 9%), liquor (down 14%), and wine (down 400,000 liters) that do not include losses due to federal excise tax rate increases; and

WHEREAS, a decline in these product sales will adversely affect the state of Montana's excise tax revenues, resulting in a potential loss of $3.68 million in revenue that the Senate and House of Representatives will have to raise elsewhere; and

WHEREAS, a $2.385 million loss in state revenue from gasoline excise taxes would translate into a 2.83% reduction in revenue available to the highway fund, and a $1.037 million loss in state revenue from cigarette excise taxes would reduce debt service revenue by 9.09%; and

WHEREAS, the Montana Revenue Estimating Advisory Council projects a decline in state revenues, and Montana cannot afford further loss of existing revenue.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives of the State of Montana express their opposition to the United States Congressional Joint Committee on Taxation's option of increasing federal excise tax rates on beer, wine, cigarettes, gasoline, and distilled spirits.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to each member of the Montana Congressional Delegation and to the Chairman of the United States Congressional Joint Committee on Taxation.

Passed March 3, 1989.

## HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AFFIRMING THE FINDINGS OF THE FLATHEAD BASIN COMMISSION IN OPPOSITION TO THE PROPOSED CABIN CREEK COAL MINE IN THE PROVINCE OF BRITISH COLUMBIA; RECOGNIZING THE FINDINGS OF ADVERSE IMPACTS CONTAINED IN TECHNICAL REPORTS PREPARED FOR THE INTERNATIONAL JOINT COMMISSION; ANTICIPATING THOSE FINDINGS WILL BE SUSTAINED IN RECOMMENDATIONS OF THE INTERNATIONAL JOINT COMMISSION; AND ENDORSING THE CONCEPT OF COOPERATIVE, LONG-TERM RESOURCE MANAGEMENT AMONG THE GOVERNMENTS OF MONTANA, BRITISH COLUMBIA, THE UNITED STATES, AND CANADA FOR THE NORTH FORK OF THE FLATHEAD RIVER DRAINAGE IN MONTANA AND THE FLATHEAD RIVER DRAINAGE IN BRITISH COLUMBIA.

WHEREAS, the Legislature established the Flathead Basin Commission in 1983 to protect the existing high quality of Flathead Lake's aquatic environment and the waters that flow into and out of or are tributary to the lake; and

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WHEREAS, the Legislature charged the Commission with promoting cooperation between Montana and British Columbia on resource development in the Flathead Basin; and

WHEREAS, the Legislature recognized that activities in the Canadian portion of the Flathead's drainage can have a significant effect on the quality of the Flathead River system, including Flathead Lake; and

WHEREAS, the proposed development of a major coal mine that would have substantial negative impacts on the quality of the Flathead River system was referred to the International Joint Commission, which studied the effects of the proposed mine in a cooperative effort, resulting in the investigative board's report; and

WHEREAS, on September 15, 1988, after analysis and discussion, the Flathead Basin Commission voted to oppose the proposed Cabin Creek Coal Mine in a hearing before the International Joint Commission; and

WHEREAS, the Flathead Basin Commission strongly urged members of the International Joint Commission to recommend to their respective governments that the Cabin Creek Coal Mine not be built and that assessment of alternatives to constructing the mine begin immediately, including, if necessary, helping facilitate location of an alternative source of coal in a less environmentally sensitive area; and

WHEREAS, the Flathead Basin Commission also urged the International Joint Commission to begin discussion regarding a bilateral agreement on what type of industrial development is and what type is not consistent with the environmental and aesthetic characteristics of the Waterton-Glacier area; and

WHEREAS, in response to testimony by the State of Montana, the Flathead Basin Commission, and others and in consideration of technical findings revealing that the coal mine would pose an unacceptable risk of environmental degradation, it is anticipated the International Joint Commission will sustain the testimony and findings through a recommendation against development of the mine; and

WHEREAS, information developed through the international reference on the mine proposal has demonstrated the need to address land management issues in the North Fork of the Flathead River drainage in Montana and the Flathead River drainage in British Columbia in the context of the long-term conservation of resource values; and

WHEREAS, the International Joint Commission is in receipt of a proposal by the State of Montana that the governments of Montana, British Columbia, the United States, and Canada establish a cooperative structure to achieve conservation goals in the drainage while maintaining appropriate resource development options.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature recognize the findings of adverse impacts contained in technical reports prepared for the International Joint Commission

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and affirm the findings and recommendations of the Flathead Basin Commission in opposition to the proposed Cabin Creek Coal Mine in the Province of British Columbia.

(2) That the Legislature, anticipating that those findings will be sustained in the recommendations of the International Joint Commission, endorse the concept of cooperative, long-term resource management among the governments of Montana, the United States, British Columbia, and Canada for the North Fork of the Flathead River drainage in Montana and the Flathead River drainage in British Columbia.

(3) That the Secretary of State send copies of this resolution to each member of the Montana Congressional Delegation and to each member of the International Joint Commission.

Passed March 17, 1989.

## HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING THE ADOPTION OF "MCGRUFF" AS THE SYMBOL FOR A BLOCK PARENT PROGRAM IN LOCAL COMMUNITIES.

WHEREAS, there is increasing public concern over the thousands of missing or kidnapped children reported each year; and

WHEREAS, the mobility of modern society enables missing or kidnapped children to be transported from one end of the state to another in a short period of time; and

WHEREAS, there is a need for "block parent" programs to identify homes in local communities that would serve as a refuge for children who are frightened, injured, lost, in danger, crime victims, or in any emergency situation; and

WHEREAS, the National Crime Prevention Council has adopted "McGruff" the crime fighting dog as its official symbol for block parent houses; and

WHEREAS, "McGruff" is a nationally recognized symbol as well known for crime prevention as "Smokey the Bear" is for fire prevention.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature encourage, support, and recommend that local communities establish a block parent program for the protection of our children.

(2) That only one symbol be used so that a child may readily recognize the symbol regardless of what part of the state the child is from.

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(3) That the Legislature encourage, support, and recommend that the crime prevention dog "McGruff" be the symbol used to represent block parent houses.

(4) That copies of this resolution be sent to the Montana Board of Crime Control and the Attorney General of Montana.

Passed March 11, 1989.

## HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE SYSTEM OF MARKETING MOTOR FUELS IN MONTANA TO DETERMINE IF SUBSIDIZED PRICING AND PREDATORY MOTOR FUEL FRANCHISE PRACTICES GIVE UNFAIR COMPETITIVE ADVANTAGE TO CERTAIN WHOLESALERS AND RETAILERS; AND REQUIRING A REPORT OF THE STUDY'S FINDINGS TO THE 52ND LEGISLATURE.

WHEREAS, independent and small dealers and distributors of petroleum and related products, who are vital to a healthy, competitive marketplace, are unable to survive subsidized pricing and predatory motor fuel franchise practices at the wholesale and retail levels by other wholesalers and retailers who have other sources of income; and

WHEREAS, subsidized pricing and predatory motor fuel franchise practices are not conducive to fair trade; and

WHEREAS, laws prohibiting those practices are effective in protecting independent and small retailers and wholesalers in other jurisdictions; and

WHEREAS, a decision on whether a law prohibiting those practices is needed in Montana depends upon a determination that a problem of subsidized pricing and predatory motor fuel franchise agreements in the motor fuels industry does exist in Montana and upon the extent of the problem.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study the marketing of motor fuels in Montana to determine if there exist discriminatory or predatory systems of pricing or motor fuel franchise agreements in which independent wholesalers and retailers are unfairly burdened with higher costs than competing wholesalers and retailers owned by or affiliated with companies that also own production facilities and distribution systems.

BE IT FURTHER RESOLVED, that if the interim committee determines that discriminatory or predatory practices are indeed subjecting independent Montana wholesalers and retailers to unfair competition from other wholesalers and retailers who benefit from those practices, the interim committee prepare legislation to remedy the problem of unfair competition caused by those practices.

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BE IT FURTHER RESOLVED, that the interim committee report in writing to the 52nd Legislature and submit proposed remedial legislation if the interim committee determines that legislation is necessary.

Passed March 21, 1989.

## HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1990-91 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A JUNE 30, 1988, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1989-90 AND 1990-91; AND ESTABLISHING AN ESTIMATE OF THE NONGENERAL FUND REVENUES FOR THE SCHOOL FOUNDATION PROGRAM.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail the estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution requires that the Legislature may not appropriate funds in excess of the anticipated revenue of the state; and

WHEREAS, section 5-12-302(2), MCA, requires the Office of the Legislative Fiscal Analyst to estimate revenue from existing and proposed taxes, and section 17-7-123(1), MCA, requires the Governor to submit a budget showing a balance between total proposed disbursements and total anticipated receipts; and

WHEREAS, due to the complexity of economic variables involved in revenue forecasting and the diversity of sources from which state revenues are obtained, it has become increasingly difficult to project revenues in order to prepare a balanced budget for the ensuing biennium; and

WHEREAS, past legislatures have not agreed on revenue projections until the last days of the session, when there is little time for comprehensive analysis or reasoned criticism; and

WHEREAS, it is in the best interests of the state that revenue forecasts be discussed and arrived at in public hearings at which all the people may attend and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the state general fund revenue for fiscal years 1989, 1990, and 1991 is estimated to be $402,691,000, $390,086,000, and $405,858,000, respectively. The school foundation revenue for fiscal years 1989, 1990, and 1991 is estimated to be $278,427,000, $255,786,000, and $262,304,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accepts for budget purposes the unreserved fund balance for the general fund of $39,472,000, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1988.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use the revenue estimates contained in this resolution as the official revenue estimates for fiscal years 1989-90 and 1990-91.

## GENERAL FUND REVENUE

The projections for total general fund revenue during the 1990-91 biennium are based on an assumption of a continuation of Montana law as it existed on January 1, 1989. It is also assumed that all public institutions currently certified for medicaid will remain certified.

The revenue estimates contained in the following tables are based on the assumptions stated previously herein and those listed in the following tables.

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## ECONOMIC ASSUMPTIONS

### Revenue Estimating Advisory Council
### Economic Assumptions

| Year | Assumption | CY/FY 88 | CY/FY 89 | CY/FY 90 | CY/FY 91 |
|---|---|---|---|---|---|
| CY | Oil Production (Millions) | 22.500 | 21.500 | 20.000 | 19.000 |
| CY | Oil Price | $14.500 | $15.000 | $15.500 | $16.000 |
| CY | Coal Production (Millions) | 36.879 | 31.796 | 32.000 | 32.000 |
| CY | Coal Price | $7.385 | $7.360 | $7.460 | $7.410 |
| CY | Coal Tax Credits (Millions) | $6.479 | $4.133 | $2.552 | $0.949 |
| CY | Copper Production (M lbs) | 158.442 | 140.951 | 117.079 | — |
| CY | Gold Production (M ozs) | 0.302 | 0.309 | 0.291 | — |
| CY | Silver Production (M ozs) | 6.341 | 6.902 | 6.922 | — |
| CY | Lead Production (M lbs) | 16.330 | 16.330 | 16.330 | — |
| CY | Zinc Production (M lbs) | 40.449 | 40.449 | 40.449 | — |
| CY | Molybdenum Production (M lbs) | 12.954 | 12.514 | 12.074 | — |
| CY | Palladium Production (M ozs) | 0.137 | 0.150 | 0.182 | — |
| CY | Platinum Production (M ozs) | 0.041 | 0.044 | 0.054 | — |
| CY | Copper Price | $0.900 | $0.750 | $0.750 | — |
| CY | Gold Price | $425.000 | $425.000 | $400.000 | — |
| CY | Silver Price | $6.350 | $6.500 | $6.000 | — |
| CY | Lead Price | $0.360 | $0.400 | $0.400 | — |
| CY | Zinc Price | $0.650 | $0.700 | $0.700 | — |
| CY | Molybdenum Price | $3.200 | $3.300 | $3.300 | — |
| CY | Palladium Price | $124.000 | $124.000 | $124.000 | — |
| CY | Platinum Price | $550.000 | $550.000 | $525.000 | — |
| FY | Forest Receipts (Millions) | $6.500 | $8.239 | $6.006 | $5.743 |
| | MT Population July 1 (Thousands) | 804.000 | 809.000 | 815.000 | 819.000 |
| | MT Population M= 16 July 1 (Thousands) | 613.000 | 616.000 | 621.000 | 625.000 |
| | MT Population 18-24 July 1 (Thousands) | 81.000 | 78.000 | 75.000 | 72.000 |
| CY | CPI Percent Change | 4.140% | 4.700% | 4.700% | 3.650% |
| FY | Short-Term Interest Rate | 7.500% | 8.500% | 8.000% | 8.000% |
| FY | Long-Term Interest Rate | 10.140% | 9.750% | 10.000% | 10.000% |
| CY | Prime Interest Rate | 9.440% | 11.240% | 9.940% | 8.900% |
| FY | Treasury Cash Average Balance (Millions) | $222.374 | $248.000 | $251.214 | $247.573 |
| FY | TRANS Issue (Millions) | $56.000 | $0.000 | $51.000 | $62.000 |
| FY | Permanent Trust Bond Calls (Millions) | $0.614 | $0.000 | $0.000 | $0.000 |
| FY | Education Trust Bond Calls (Millions) | $0.218 | $0.000 | $0.000 | $0.000 |
| FY | Common School Trust Bond Calls (Millions) | $0.527 | $0.000 | $0.000 | $0.000 |
| FY | Resource Ind. Trust Bond Calls (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| FY | Park Acq. Trust Bond Calls (Millions) | $0.000 | $0.000 | $0.000 | $0.000 |
| CY | MT Personal Income (Billions) | $10.300 | $11.100 | $11.600 | $12.100 |
| CY | MT Nonfarm Labor Income (Billions) | $6.300 | $6.600 | $7.000 | $7.500 |
| CY | U.S. Corporate Profits Before Taxes (Billions) | $299.200 | $314.600 | $330.008 | |
| CY | MT Nonfarm Employment (Thousands) | 279.000 | 280.700 | 282.200 | 284.100 |
| FY | Income Tax Audits (Millions) | | $10.307 | $10.786 | $11.266 |
| CY | Individual Federal Tax Reform (Millions) | $49.434 | $60.631 | $73.180 | $87.423 |
| CY | MT Corporate Taxable Income (Millions) | $548.793 | $572.479 | $595.605 | $643.962 |
| CY | Corporate Federal Tax Reform (Millions) | $7.421 | $8.001 | $8.505 | $9.041 |
| FY | Corporation Tax Audits (Millions) | $9.203 | $8.000 | $7.000 | $7.000 |
| FY | Liquor Unit Sales (Millions) | 5.094 | 4.789 | 4.741 | 4.741 |
| FY | Wine Unit Sales (Millions) | 0.180 | 0.161 | 0.154 | 0.154 |
| FY | Liquor Cost Per Unit | $8.340 | $8.530 | $8.720 | $8.920 |

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| Year | Assumption | CY/FY 88 | CY/FY 89 | CY/FY 90 | CY/FY 91 |
|---|---|---|---|---|---|
| FY | Wine Cost Per Unit | $5.690 | $5.940 | $6.210 | $6.490 |
| FY | Liquor Division Budget (% Change) | -5.101% | -2.000% | -1.000% | 0.000% |
| FY | Cigarette Packs (Millions) | 72.909 | 73.422 | 73.422 | 73.422 |
| FY | Tobacco Value (Millions) | $5.948 | $6.152 | $6.312 | $6.472 |
| FY | Net/Gross Proceeds (Millions) | $383.272 | $410.315 | $366.410 | $330.941 |
| FY | All Other Valuation (Millions) | $1,594.619 | $1,532.635 | $1,536.598 | $1,551.253 |
| FY | Institution Reimbursements (Millions) | $15.395 | $16.090 | $12.211 | $12.352 |
| FY | Insurance Revenue Growth (% Change) | 60.360% | -27.610% | 5.800% | 5.800% |
| FY | Police & Firemen Retirement (Millions) | $5.626 | $5.826 | $5.989 | $6.149 |
| FY | Telephone Taxable Income (% Change) | 4.880% | 4.890% | 4.520% | 3.910% |
| FY | Kilowatt Hours Produced (Millions) | 18,007.053 | 19,860.115 | 17,805.115 | 17,805.115 |
| FY | Inheritance Tax (Millions) | $8.745 | $10.514 | $9.550 | $9.980 |
| FY | Drivers' License Fees (Millions) | $1.939 | $1.976 | $1.943 | $1.996 |
| FY | Barrels of Beer (Millions) | 0.697 | 0.690 | 0.690 | 0.700 |
| CY | Freight Line Earnings (Millions) | $22.357 | $21.527 | $23.418 | $24.400 |
| FY | Liters of Wine (Millions) | 5.812 | 5.206 | 4.962 | 4.962 |
| FY | Poker Total Receipts (Millions) | $7.684 | $12.372 | $12.495 | $12.620 |
| FY | Vehicle Total Receipts (Millions) | $32.173 | $33.000 | $36.000 | $38.000 |
| FY | Other Receipts (Millions) | $16.117 | $16.898 | $16.184 | $16.729 |
| FY | Interest & Income Receipts (Millions) | $34.079 | $32.496 | $33.699 | $34.770 |
| FY | Per Capita Lottery Sales | $26.20 | $17.09 | $17.09 | $17.09 |

Current Law
General Fund Revenue Estimates
(In Millions)

| Revenue Component | Estimated FY 1989 | Estimated FY 1990 | Estimated FY 1991 |
|---|---|---|---|
| Individual Income Tax | $150.536000 | $149.351000 | $159.894000 |
| Corporation License Tax | 30.184000 | 29.932000 | 30.165000 |
| Coal Severance Tax | 9.115000 | 7.237000 | 6.412000 |
| Oil Severance Tax | 13.536000 | 13.165000 | 12.613000 |
| Interest on Investments | 21.080000 | 20.097000 | 19.806000 |
| Long-Range Bond Excess | 40.839000 | 40.612000 | 42.484000 |
| Coal Trust Interest Income | 39.720000 | 36.540000 | 38.646000 |
| Insurance Premiums Tax | 21.371000 | 22.187000 | 23.685000 |
| Public Institutions Reimbursement | 16.090000 | 12.211000 | 12.352000 |
| Liquor Profits | 3.524000 | 3.714000 | 3.942000 |
| Liquor Excise Tax | 5.188000 | 5.252000 | 5.370000 |
| Inheritance Tax | 10.514000 | 9.550000 | 9.980000 |
| Metal Mines Tax | 4.203000 | 4.336000 | 3.703000 |
| Electrical Energy Tax | 3.632000 | 3.221000 | 3.221000 |
| Drivers' License Tax | 0.804000 | 0.791000 | 0.812000 |
| Telephone License Tax | 3.656000 | 3.821000 | 3.971000 |
| Beer License Tax | 1.242000 | 1.244000 | 1.260000 |
| Natural Gas Severance Tax | 1.418000 | 1.073000 | 1.092000 |
| Freight Line Tax | 1.126000 | 1.288000 | 1.342000 |
| Wine Tax | 0.833000 | 0.794000 | 0.794000 |
| Other Revenue Sources | 24.080000 | 23.673000 | 24.314000 |
| GRAND TOTAL | $402.691000 | $390.086000 | $405.858000 |

Current Law
Foundation Program Revenue Estimates
(In Millions)

| Revenue Component | Estimated FY 1989 | Estimated FY 1990 | Estimated FY 1991 |
|---|---|---|---|
| State Revenue | | | |

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| Revenue Component | Estimated FY 1989 | Estimated FY 1990 | Estimated FY 1991 |
|---|---|---|---|
| Income Tax | $82.252000 | $81.604000 | $87.365000 |
| Corporation Tax | 11.791000 | 11.692000 | 11.783000 |
| Coal Severance Tax | 9.997000 | 2.010000 | 1.781000 |
| Interest & Income | 32.496000 | 33.699000 | 34.770000 |
| U.S. Oil & Gas Royalties | 20.955000 | 17.119000 | 17.404000 |
| Education Trust Interest | 0.848000 | 1.564000 | 1.831000 |
| Miscellaneous Revenue | 9.732000 | 0.000000 | 0.000000 |
| County Levy Surplus | 0.000000 | 0.000000 | 0.000000 |
| Total State | $168.071000 | $147.688000 | $154.934000 |
| Statewide Taxable Valuation | 1942.950000 | 1903.008000 | 1882.194000 |
| County Revenue | | | |
| Mandatory Levy | 87.433000 | 85.635000 | 84.699000 |
| Elementary Transportation | -4.419000 | -3.717000 | -3.717000 |
| Cash Reappropriated | 3.737000 | 2.604000 | 2.955000 |
| Forest Funds | 1.163000 | 1.465000 | 1.465000 |
| Taylor Grazing | 0.108000 | 0.102000 | 0.102000 |
| Miscellaneous Revenue | 4.213000 | 4.310000 | 4.310000 |
| High School Tuition | -0.759000 | -0.838000 | -0.838000 |
| Total County | $91.476000 | $89.561000 | $88.976000 |
| District Revenue | | | |
| Permissive Levy | 17.487000 | 17.127000 | 16.940000 |
| Miscellaneous Revenue | 1.393000 | 1.410000 | 1.454000 |
| Total District | $18.880000 | $18.537000 | $18.394000 |
| Total State, County, District | $278.427000 | $255.786000 | $262.304000 |

Passed April 21, 1989.

# HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AMENDING THE JOINT RULES BY ADDING A SECTION PROVIDING FOR LEADERSHIP OVERSIGHT OF JOINT LEGISLATIVE AGENCIES AND COMMITTEES.

BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the joint rules of the 51st Legislature be amended by adding the following new section:

**30-70. Oversight of joint legislative agencies and committees.** The President of the Senate, the Speaker of the House, and the minority leaders of the Senate and the House comprise a legislative management committee which shall meet from time to time at the request of one of its members to review and oversee the activities of joint agencies and committees of the legislative branch established by law or resolution. The committee may consider, without limitation, matters concerning jurisdictional disputes between joint agencies and committees, agency salary schedules and employment policies, and any other matter bearing upon the efficient operation of the legislative branch. The committee may make such recommendations as it chooses to the appropriate authority or the legislature.

Passed April 12, 1989.

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# HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE AUDIT COMMITTEE TO STUDY THE NEED AND FEASIBILITY OF THE STATE TO REGULATE OR CONTROL ALTERNATIVE HEALTH CARE PROVIDERS; AND REQUIRING A REPORT OF THE STUDY'S FINDINGS AND RECOMMENDATIONS TO THE 52ND LEGISLATURE.

WHEREAS, under the provisions of section 2-8-203, MCA, the Legislative Audit Committee is charged with the responsibility to review and assess the merits of any proposal to establish a new occupational licensing board; and

WHEREAS, certain health care professionals, such as acupuncturists, naturopaths, rolfers, massage therapists, and midwives, are not subject to professional regulation to assure their fitness to prescribe or administer to the needs of the public; and

WHEREAS, practitioners of certain health care professions may choose to subject themselves to regulation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee conduct a study, as provided in section 2-8-203, MCA, to determine:

(1) the necessity and feasibility of the state to regulate or control alternative health care providers, including but not limited to acupuncturists, naturopaths, rolfers, massage therapists, and midwives;

(2) whether regulation or control of alternative health care providers exists in other states and, if so, the experience of those states; and

(3) whether alternative health care providers in Montana need and want state regulation or control.

BE IT FURTHER RESOLVED, that in addition to complying with the provisions and deadlines of section 2-8-203, MCA, in conducting the study requested under this resolution, the Legislative Audit Committee expedite the completion of the study to assure that any legislation found to be desirable or necessary will be drafted in time for presentation to the 52nd Legislature.

BE IT FURTHER RESOLVED, that the Legislative Audit Committee, regardless of whether it determines that legislation to establish regulation or control of alternative health care professionals is desirable or necessary, report the findings and recommendations of its study to the 52nd Legislature.

Passed March 21, 1989.

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# HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE SECRETARY OF TRANSPORTATION TO ASK CONGRESS FOR FUNDS NECESSARY TO CONTINUE THE ESSENTIAL AIR SERVICE PROGRAM.

WHEREAS, the Airline Deregulation Act of 1978 enacted by Congress included a provision guaranteeing the continuation of essential air service for 10 years to small communities receiving air service; and

WHEREAS, in eight small Montana rural communities that have received subsidies under the provisions of the "Essential Air Service" program, scheduled airline service has been the lifeline of those communities, connecting them with the state and the national air transportation systems; and

WHEREAS, in 1987 Congress demonstrated strong bipartisan commitment for essential air service to small rural communities by extending the program for 10 years; and

WHEREAS, Congress provided for enhancement of the "Essential Air Service" program by authorizing an additional subsidy, if matched by the communities or states, to permit other small communities to elect to join the program; and

WHEREAS, if the Department of Transportation adopts proposed rules, seven of Montana's small, rural communities will be eliminated from the subsidized "Essential Air Service" program and will face devastating social and economic impacts; and

WHEREAS, the 1989 appropriations for the "Essential Air Service" program fell about $6.6 million short of maintaining the existing program and about $19 million short of funding the entire program authorized by Congress.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Secretary of Transportation be requested to reconsider and to abolish plans to adopt regulations to implement any and all reductions for the 1989 "Essential Air Service" program.

BE IT FURTHER RESOLVED, that the Secretary of Transportation be requested to ask Congress for the necessary supplemental appropriation to adequately fund the "Essential Air Service" program during fiscal year 1989.

BE IT FURTHER RESOLVED, that the Secretary of State of the State of Montana send copies of this resolution to the President of the United States, the Secretary of Transportation, the members of Montana's Congressional Delegation, and the Governor of the State of Montana.

Passed March 21, 1989.

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# HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY TO CONSIDER THE COST EFFECTS OF ITS PROPOSED REGULATIONS FOR SOLID WASTE LANDFILLS; AND URGING THE UNITED STATES CONGRESS TO PROVIDE THE STATES WITH THE FINANCIAL RESOURCES NECESSARY TO IMPLEMENT ANY NEW REGULATIONS FOR SOLID WASTE LANDFILLS.

WHEREAS, in 1988, the United States Environmental Protection Agency (EPA) released proposed minimum federal regulations for solid waste landfills, which were prompted by studies demonstrating significant nationwide ground water pollution caused by substances leaching from landfills; and

WHEREAS, the EPA rules would set strict requirements for ground water monitoring (both ongoing and for 30 years after closure of the landfill), financial assurance, recordkeeping, inspection of landfill loads for hazardous waste, and leak prevention for new landfills; and

WHEREAS, the proposed regulations are open for comment, with final regulations to be adopted in late 1989 and to become effective in early 1991; and

WHEREAS, if adopted as drafted, the EPA regulations would have major effects on Montana's landfills, which now number 140, the large majority of which were licensed before there was concern over ground water contamination and are operated by rural communities that have neither the financial nor technical resources to meet the proposed requirements; and

WHEREAS, the proposed EPA regulations come at a time when the state's solid waste program is minimally staffed and is already unable to meet its current responsibilities of licensing, inspecting, and assisting existing landfills to ensure that public health concerns are met; and

WHEREAS, state officials believe that as EPA moves toward adoption of the new landfill regulations, many landfills are likely to close rather than meet the costs associated with those new regulations, because those that remain open—even for only 1 day after the regulations become effective—will be responsible for 30 years of water quality monitoring and for other requirements; and

WHEREAS, the Department of Health and Environmental Sciences has already been contacted by dozens of communities that are aware of the pending regulations and that are seeking direction for future action, and the department's staff resources are too limited to respond adequately to requests for assistance.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That the Legislature recognizes the concern over pollution of ground water from materials leached from landfills but urges the EPA to consider the cost effects of its proposed regulations on rural communities.

(2) That the Legislature urges the United States Congress to provide funding for states to implement any new regulations that may be adopted for solid waste landfills.

(3) That copies of this resolution be sent to the administrator of the EPA and to each member of Montana's Congressional Delegation.

Passed March 17, 1989.

## HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CITIZENS OF MONTANA TO MAKE THE SALUTE TO THE AMERICAN FLAG A REGULAR PART OF PUBLIC MEETINGS AND ACTIVITIES.

WHEREAS, it is fitting, in this bicentennial era, to reflect upon and reaffirm our support of the principles upon which our great state and nation were founded; and

WHEREAS, the American flag is the emblem of freedom in its best sense because it signifies government resting on the consent of the governed, liberty regulated by law, protection of the weak against the strong, security against the exercise of arbitrary power, and absolute safety for free institutions against foreign aggression; and

WHEREAS, in the words of President Woodrow Wilson, "The things that the flag stands for were created by the experiences of a great people. Everything that it stands for was written by their lives. The flag is the embodiment, not of sentiment, but of history. It represents the experiences made by men and women, the experiences of those who do and live under that flag"; and

WHEREAS, it is essential to the continued peace, prosperity, and growth of our state and nation that our citizens adhere to and promote those distinctive American values that make our country strong; and

WHEREAS, we support the statement of the United States Supreme Court in Board of Education v. Barnette, 319 U.S. 624 (1942), that "To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds"; and

WHEREAS, we support the concept of a voluntary salute to the flag in the public schools if done with respect for the instructors and students participating; and

WHEREAS, we, as members of the Montana State Legislature, should lead our citizens by making the salute to the flag a regular part of our public meetings and activities.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the citizens of the state of Montana are encouraged to make the salute to the American flag a regular part of public meetings and activities.

BE IT FURTHER RESOLVED, that the salute to the flag be included in the regular activities of the public schools as long as individual rights guaranteed under the Constitution are respected and protected.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each county and school district in the state.

Passed March 18, 1989.

## HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO PROVIDE A SUPPLEMENTAL APPROPRIATION TO FULLY FUND VETERANS' ADMINISTRATION MEDICAL CENTERS AT FORT HARRISON AND MILES CITY.

WHEREAS, Montana's 106,000 veterans constitute the third largest per capita number of veterans in the United States who look to the Veterans' Administration to provide for their health needs; and

WHEREAS, among World War II veterans from all the states, Montanans suffered the second largest casualty rate, and many of the older veterans need medical and surgical treatment, as well as nursing home care, but are unable to afford private medical care programs; and

WHEREAS, these veterans are being advised to seek medical assistance from state- or county-funded programs; and

WHEREAS, the veterans' facility at Fort Harrison has no nursing home unit, and the medical and surgical hospital beds at both Fort Harrison and Miles City have been reduced by a total of 58 beds; and

WHEREAS, the Fort Harrison and Miles City veterans' hospitals will each have budget deficits in 1989 exceeding $1 million; and

WHEREAS, this funding shortage in the Veterans' Administration has resulted in fewer eligible veterans being treated at Montana's veterans' hospitals and has left hundreds of Montana veterans without needed medicine; and

WHEREAS, Veterans' Administration employees in Montana have worked beyond their required job limits in a superior effort to care for our veterans; and

WHEREAS, the United States government has pledged to provide medical care for its veterans.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 51st Legislature implore the Congress of the United States to pass legislation endorsing a supplemental appropriation to fund and staff the Veterans' Administration Medical Centers at Fort Harrison and Miles City to fully utilize all the medical and surgical beds, to reopen the closed ward at the Fort Harrison facility, and to proceed with a plan to construct and staff a 120-bed Veterans' Administration nursing home care unit at Fort Harrison.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Secretary of Veterans' Affairs, the United States Senate and House Committees on Veterans' Affairs, the Governor of the State of Montana, and each member of the Montana Congressional Delegation.

Passed March 21, 1989.

## HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO AUTHORIZE THE USE OF PICK-SLOAN MISSOURI BASIN FUNDS FOR REHABILITATING IRRIGATION PROJECT FACILITIES IN THE UPPER MISSOURI BASIN STATES AND PICK-SLOAN MISSOURI BASIN POWER FOR IRRIGATION PUMPING FOR IRRIGATION PROJECTS IN THE UPPER MISSOURI BASIN STATES.

WHEREAS, the United States Congress enacted the Pick-Sloan Missouri Basin Plan in the federal Flood Control Act of 1944 after carefully considering and balancing the costs and benefits among the Missouri Basin states; and

WHEREAS, this act was intended to result in a wide range of multiple-purpose benefits to the Missouri Basin states, including irrigation, hydroelectric power generation, flood control, navigation, sediment abatement, fish and wildlife enhancement, and pollution control; and

WHEREAS, the mainstem dams, including Fort Peck Dam in Montana, imposed great costs upon the upper Missouri Basin states and have been operational since 1964; and

WHEREAS, the benefits to lower Missouri Basin states have been realized, including over $1.8 billion in flood control benefits, a navigation channel that is now usable for 8 to 9 months each year, and the use of over 66% of the power generated from the mainstem reservoirs; and

WHEREAS, the upper Missouri Basin states lost 1.5 million acres of prime agricultural land due to the construction of the projects, receive only 32% of the low-cost hydroelectric power produced by the Pick-Sloan projects (all of which are within their boundaries), and were able to develop

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only 4% of the 3.5 million acres for irrigation that Congress promised them under the Pick-Sloan plan; and

WHEREAS, Montana receives only 6% of the hydroelectric power generated by the mainstem system and was able to develop only 5% of the lands authorized for irrigation in Montana under this plan; and

WHEREAS, many of Montana's existing irrigation projects are old, deteriorating, and in serious need of rehabilitation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature believes that promises made by the United States Congress to the state of Montana that led to the state's support for the Pick-Sloan Missouri Basin plan have not been kept.

BE IT FURTHER RESOLVED, that the Legislature believes that the use of funds from the Pick-Sloan Missouri Basin account for the rehabilitation of irrigation projects and the use of Pick-Sloan Missouri Basin plan electric power for irrigation pumping on irrigation projects in the upper Missouri Basin states is in keeping with the spirit of good faith cooperation and compromise that resulted in passage of the federal Flood Control Act of 1944.

BE IT FURTHER RESOLVED, that the United States Congress is urged to authorize the use of funds from the Pick-Sloan Missouri Basin account for the rehabilitation of existing state and federal irrigation projects in Montana and other upper Missouri Basin states in addition to other currently authorized uses.

BE IT FURTHER RESOLVED, that the United States Congress is urged to authorize the use of Pick-Sloan Missouri Basin plan power for irrigation pumping for irrigation projects located in the Yellowstone River Basin in Montana.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to each member of the Montana Congressional Delegation, the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, the Commissioner of the U.S. Bureau of Reclamation, and the Chief of Engineers of the U.S. Army Corps of Engineers.

Passed March 9, 1989.

## HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES DEPARTMENT OF AGRICULTURE AND THE UNITED STATES FOREST SERVICE TO RECONSIDER THE WISDOM OF THE "LET IT BURN" POLICY AND TO MODIFY THE POLICY TO REFLECT LOCAL CONDITIONS AND TO PROVIDE ACCOUNTABILITY FOR DECISIONS; AND URGING COOPERATION WITH STATE AND LOCAL OFFICIALS AND AFFECTED CITIZENS.

WHEREAS, the prescribed burn policy adopted by the United States Department of Agriculture is too rigid to reflect local weather and land-use situations; and

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WHEREAS, there is no difference to the environment or to the public in the effects of a naturally caused prescribed burn versus a human-caused fire; and

WHEREAS, drought effects in Montana in 1988 were obvious but largely ignored by the United States Forest Service; and

WHEREAS, federal fire management plans, in many cases, have no contingencies for fighting fire on private lands; and

WHEREAS, in most instances, a concise definition of the "let it burn" policy has never been presented to local officials or the Montana citizenry; and

WHEREAS, fire policy priorities ignored actual wilderness usage by outfitters and watershed and as winter range for wildlife; and

WHEREAS, the prescribed burn policy has no provision for accountability for decisions; and

WHEREAS, the prescribed burn policy ignores the buildup of fuel over decades and fails to take into consideration the monumental effort of attempting to extinguish fires during severe drought; and

WHEREAS, there seems to be little flexibility in the prescribed burn policy, and it fails to take into account the different nature of each fire; and

WHEREAS, "triggers" to judge a fire as a prescribed natural fire or wildfire need to be redefined; and

WHEREAS, the prescribed burn policy fails to take into consideration the availability of resources to fight fires when needed and the manpower needed to put out or even attempt to contain fires when the area of prescribed burn is exceeded; and

WHEREAS, many "class I" fire teams greatly damaged the United States Forest Service image through arrogant treatment of the Montana public; and

WHEREAS, expert opinion within the United States Forest Service and of local citizens on fire behavior and fire spread were ignored during the disastrous summer of 1988; and

WHEREAS, fiscal management in the fire suppression effort was deployed in such a manner that no one was held accountable; and

WHEREAS, intercommunication system principles were ignored with respect to coordination with local sheriff's departments; and

WHEREAS, in many instances, the United States Forest Service did not even attempt to keep local people informed and, when information was disseminated, repeatedly miscommunicated the actual firefighting status to Montana citizens; and

WHEREAS, the United States Forest Service failed to inform itself of or use local resources available to fight fires; and

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WHEREAS, there was a lack of input from the Montana Department of State Lands accepted by the United States Forest Service in fighting fires; and

WHEREAS, there was a failure to inform landowners and permittees of fire movements or to seek advice and assistance from the affected parties; and

WHEREAS, the arrogance of the United States Forest Service in dealing with permittees over the last several years has driven a wedge between the permittees and the Forest Service; and

WHEREAS, the United States Forest Service failed to explain to affected local communities the methodology of fighting fires or the rationale for not fighting fires; and

WHEREAS, the United States Forest Service has failed to compensate Montana citizens for losses caused by fires in cases where it is clearly liable because it failed to fight fires until a disastrous situation had occurred and failed to heed warnings by experts both within and outside the Forest Service to fight the fires as early as possible.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Department of Agriculture and the United States Forest Service be urged to reevaluate and modify the prescribed burn policy, taking into account local conditions and local expertise.

BE IT FURTHER RESOLVED, that the Secretary of State of Montana send a copy of this resolution to the President of the United States, the United States Secretary of the Interior, the United States Secretary of Agriculture, the Director of the Bureau of Land Management, the Chief of the United States Forest Service, all regional United States Forest Service Headquarters, and each member of Montana's Congressional Delegation.

Passed April 1, 1989.

## HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING IMMEDIATE CONSTRUCTION OF NURSING HOME FACILITIES AT THE VETERANS' ADMINISTRATION CENTER AT FORT HARRISON, MONTANA.

WHEREAS, the population of elderly citizens of the United States is growing steadily, and this growth is reflected in the increased number of aged veterans of military service; and

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WHEREAS, the State of Montana sent more of its citizens per capita into military service during World War I, World War II, the Korean Conflict, and the Vietnam War than any other state; and

WHEREAS, the need for care for elderly citizens, including veterans, is an ever more urgent concern that is particularly manifested in the increasing need among veterans, because of their advancing age, for nursing home beds; and

WHEREAS, the 26 nursing home beds in the Veterans' Administration Center at Miles City are the only nursing home beds available in Montana to answer the needs of the 106,000 veterans who live in Montana; and

WHEREAS, there are no other Veterans' Administration nursing home bed facilities within 500 miles of the Veterans' Administration Center at Fort Harrison, Montana; and

WHEREAS, in July 1980, 361 additional veterans in 65 towns and cities in the Veterans' Administration Medical and Regional Office Center's Catchment Area were identified by name, address, and diagnosis for which the veteran required nursing home care; and

WHEREAS, this deplorable lack of nursing home beds has been ignored by officials of the Veterans' Administration for the past 29 years, and the situation is acute, disgraceful, and costly; and

WHEREAS, responsible officials of the Veterans' Administration central office have ignored the need for additional nursing home beds and delayed the commencement of construction at the Veterans' Administration Center, Fort Harrison, Montana, of nursing home facilities, which construction was first scheduled to begin in 1979 and has since been postponed approximately six times, with the latest target date being 1992 or some other time in the future.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be urged to press for immediate construction of adequate nursing home facilities adjacent to the Veterans' Administration Center at Fort Harrison so that Montana's battle-scarred and disabled veterans will not be forced to sell their homes and exhaust their savings to pay out-of-pocket costs for care that they are entitled to receive from the government they served.

BE IT FURTHER RESOLVED, that the Secretary of State of the State of Montana send copies of this resolution to the President of the United States, the Secretary of the Department of Veterans' Affairs, each member of Montana's Congressional Delegation, the chairmen of the Committees on Veterans' Affairs of the United States Senate and House of Representatives, and the Governor of the State of Montana.

Passed March 22, 1989.

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# HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING RECOGNITION OF THE THREAT TO MONTANA'S COAL INDUSTRY POSED BY FEDERAL ACID RAIN LEGISLATION AND REQUESTING SUPPORT FOR THE MAGNETOHYDRODYNAMICS PROGRAM AND THE DEVELOPMENT OF CLEAN COAL TECHNOLOGIES AND URGING THE COAL TAX OVERSIGHT SUBCOMMITTEE, THE GOVERNOR, AND THE MONTANA CONGRESSIONAL DELEGATION TO GIVE PRIORITY TO CONSIDERATION OF THOSE SUBJECTS.

WHEREAS, many proposals pending before Congress to minimize the environmental damage caused by acid rain would require coal-fired electric generating plants to substantially reduce sulfur dioxide, nitrogen oxides, and particulate emissions to below the 1980 levels by the year 2000; and

WHEREAS, mandated reductions may be achieved by installation of conventional technology (scrubbers) or through the utilization of clean coal technologies; and

WHEREAS, it is proposed that certain utility plants will qualify for subsidization of the capital cost of such technology to be paid from a trust fund accumulated from a national fee on the generation of electricity; and

WHEREAS, proposed acid rain legislation would impose cost burdens on the Montana coal industry and Montana utility ratepayers to rectify conditions that exist because of the combustion of high-sulfur fuels mined in eastern and midwestern states in generating facilities that benefit the residents of those regions; and

WHEREAS, passage of acid rain legislation in many of the forms under consideration would restrain and restrict the growth of the Montana coal industry and reduce employment in Montana by creating circumstances prejudicial to Montana producers; and

WHEREAS, research in magnetohydrodynamics (MHD), coal drying and beneficiation, and other new clean coal technologies, which is proceeding in Montana, promises to perfect techniques and systems to:

(1) increase by 50% or more the efficiency of coal-fired electric generation with minimal environmental impacts and less water use;

(2) markedly increase the energy content of Montana coal;

(3) substantially improve the acceptability of Montana coal on a national sales and purchase basis; and

(4) contribute to resolution of national and international acid rain problems without the potential crippling impact of some proposed legislation; and

WHEREAS, the J. E. Corette Plant in Billings is a prime candidate for designation of MHD retrofit as a near-commercial demonstration in the

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federally sponsored Clean Coal Technology Program and selection of the J. E. Corette Plant would solidify Montana's leadership in MHD research; and

WHEREAS, Montana's excess capacity in existing coal mines and its vast reserves of recoverable coal are among the state's most valuable assets for future economic growth.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature, the Governor of the State of Montana, and the Montana Congressional Delegation:

(1) recognize and counter any challenge posed to Montana by federal acid rain legislation;

(2) emphasize in Montana's economic objectives the perfection of clean coal technology to increase the acceptability of Montana coal in nationwide markets;

(3) advocate and promote the magnetohydrodynamics technology and the J. E. Corette Plant in Billings for MHD retrofit as the near-commercial demonstration plant in the national Clean Coal Technology Program; and

(4) encourage and promote the sale of Montana coal as a significant state economic objective.

BE IT FURTHER RESOLVED, that the Coal Tax Oversight Subcommittee accord the highest priority to the above subjects for consideration during the 1989-90 interim.

BE IT FURTHER RESOLVED, that the Secretary of State be instructed to send a copy of this joint resolution to the Governor of the State of Montana and to each member of the Montana Congressional Delegation.

Passed March 11, 1989.

## HOUSE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT ALL APPOINTIVE BOARDS, COMMISSIONS, COMMITTEES, AND COUNCILS OF THE STATE BE GENDER-BALANCED.

WHEREAS, Article II, section 4, of the 1972 Montana Constitution provides equal protection under the laws, regardless of gender, of Montana citizens; and

WHEREAS, the many appointive boards, commissions, committees, and councils of the state are granted vital roles in the public policymaking of the state; and

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WHEREAS, both men and women are part of the work force in business and industry, professions, agricultural enterprises, and government; and

WHEREAS, women comprise less than one-fourth of the membership of the more than 150 statutory, appointive boards, commissions, committees, and councils in the state; and

WHEREAS, less than one-fourth of the appointive boards, commissions, committees, and councils in the state are gender-balanced; and

WHEREAS, it is important that all appointive boards, commissions, committees, and councils of the state be gender-balanced to the greatest extent possible in order to reflect the contributions of all Montanans in public policymaking.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all appointive boards, commissions, committees, and councils of the state be gender-balanced to the greatest extent possible.

Passed March 21, 1989.

## HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE OPPOSITION OF THE LEGISLATURE TO THE USE OF MONTANA WATERS FOR THE TRANSPORTATION OF COAL UNTIL MONTANA'S WATER RIGHTS ADJUDICATION PROCESS IS COMPLETE.

WHEREAS, Montana's water is a precious resource that is necessary and claimed for agricultural, domestic, recreational, and industrial beneficial uses; and

WHEREAS, Montana's Yellowstone, Missouri, and Powder River Basins have suffered from a drastic drought that has depleted the supply of water in mountain watersheds and Pick-Sloan and other storage projects all along the mainstem of the Missouri; and

WHEREAS, the water rights of Montanans in these basins have not been fully adjudicated and may be preempted by federal legislation now pending before Congress that would authorize the use of Montana water to transport coal by slurry pipeline; and

WHEREAS, this proposed federal legislation would permit coal slurry pipeline consortiums the right of eminent domain for the transportation of Montana coal, using Montana water, to distant utilities; and

WHEREAS, unit coal trains would be eliminated, causing the loss of Montana railroad jobs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That, until Montana's water rights adjudication process is completed, the Montana Legislature opposes the pending legislation before the United States Congress that would authorize the use of eminent domain powers for coal slurry pipeline companies.

(2) That copies of this resolution be sent to the United States Department of Transportation, the United States Department of the Interior, each member of Montana's Congressional Delegation, and the appropriate committees of the United States Congress that will consider this legislation.

Passed March 23, 1989.

# HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ACKNOWLEDGIN' AND SUPPORTIN' THE GREAT MONTANA CENTENNIAL CATTLE DRIVE.

WHEREAS, as the rosy-fingered dawn lights the high, wide, and handsome prairie on the mornin' of September 4, The Big Drive of '89 begins—the Great Montana Centennial Cattle Drive from Roundup to Billings; and

WHEREAS, 10,000-odd head of critters are gonna be trailed by 5,000-odd cowhands and 250 covered wagons from Roundup to Billings, endin' up there on September 9; and

WHEREAS, word's out and savvy riders from 'round the United States and the world are signin' up to be punchers on the dusty trail in Montana this September; and

WHEREAS, the wagons are gonna be circled each night under the stars of the Big Sky for feedin', yarnin', an' funnin'; and

WHEREAS, pardn'r, there won't be no motor vehicles, boom-boxes, or TV, and it ain't gonna be some highfalutin Hollywood-type razzle-dazzle flimflam tomfoolery, but a by gawd real 1989 cowboy and cowgal drive commemoratin' those great drives of the past; and

WHEREAS, there's a special cattle brand, M-89, that's gonna be retired after the drive; and

WHEREAS, the bucks from the drive and sanctioned events go to the Montana Community Foundation to stake scholarships for rural Montana students; and

WHEREAS, a whole bunch of spectators and the national media are gonna focus their attention on the drive, and it's gonna give to the rest of the world a rare image of the last best place.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Legislature stand behind the Great Montana Centennial Cattle Drive as a grand celebration of a century of statehood, as a project befittin' Montana's rural traditions, and as a right fine enhancement of the image of Montana.

BE IT FURTHER RESOLVED, that the 51st Montana Legislature wishes HAPPY TRAILS TO YOU.

Passed March 31, 1989.

## HOUSE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING THE 75TH ANNIVERSARY OF THE SMITH-LEVER ACT OF MAY 8, 1914, AND ITS ROLE IN ESTABLISHING OUR NATION'S SYSTEM OF STATE COOPERATIVE EXTENSION SERVICES, INCLUDING THE MONTANA EXTENSION SERVICE.

WHEREAS, the Smith-Lever Act of May 8, 1914, as amended, has fostered, through the United States Department of Agriculture, the development of a system of state cooperative extension services, in conjunction with our nation's land-grant colleges and universities, that disseminates and encourages the application of research-generated knowledge and leadership techniques to individuals, families, and communities; and

WHEREAS, the Smith-Lever Act of 1914 has contributed greatly in assisting American farm families with the efficient production of a reliable supply of food and fiber for consumers in this country and throughout the world; and

WHEREAS, the cooperative extension system has done much to help rural and urban adults and youth help themselves as they have steadily improved their quality of life and leadership ability; and

WHEREAS, section 20-25-226, Montana Code Annotated, establishes the Cooperative Extension Service in Montana with the statement: "The state accepts and assents to the terms and provisions of the act of congress approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of an Act of Congress Approved July Second, Eighteen Hundred and Sixty-two, and of Acts Supplementary Thereto, and the United States Department of Agriculture""; and

WHEREAS, the relationship existing between the federal, state, and county extension services has provided for citizen input in research and educational programs of the United States Department of Agriculture and the land-grant universities for three-quarters of a century.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That the 51st Montana Legislature recognizes and supports the Cooperative Extension System as an important investment in Montana's future.

(2) That the 75th anniversary of the enactment of the Smith-Lever Act of 1914 be commemorated on May 8, 1989.

(3) That copies of this resolution be sent to the Cooperative Extension Service at Montana State University and to the Secretary of the United States Department of Agriculture.

Passed April 12, 1989.

## HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE NATIONAL PARK SERVICE, U.S. FOREST SERVICE, AND MONTANA DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO TAKE IMMEDIATE ACTION TO SEEK AND IMPLEMENT SOLUTIONS FOR THE LONG-TERM MANAGEMENT OF ELK AND BISON IN THE YELLOWSTONE ECOSYSTEM.

WHEREAS, the National Park Service is responsible for management of elk and bison within Yellowstone National Park; and

WHEREAS, the Department of Fish, Wildlife, and Parks is directed by Montana law to provide for the protection, preservation, and management of wildlife within the state; and

WHEREAS, the migratory population of Yellowstone Park's northern herds of elk has important winter ranges within the State of Montana; and

WHEREAS, the National Park Service's natural regulation program, combined with the impacts of fire and drought, has resulted in high numbers of elk and bison leaving the Park in search of food; and

WHEREAS, significant elk mortality from malnutrition is occurring outside the northern boundary of Yellowstone National Park; and

WHEREAS, movement of bison and elk threatens Montana's livestock through transmission of brucellosis; and

WHEREAS, residents and others are attempting to feed the elk, risking introduction of undesirable weed seed, concentrating the elk, and increasing risk of infection and spread of parasites; and

WHEREAS, Montana citizens and hunters are concerned that a critical portion of certain elk herds are endangered; and

WHEREAS, mass starvation of big game animals is not a management tool that is acceptable to the people of the State of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That the Legislature strongly encourage the National Park Service, U.S. Forest Service, and Montana Department of Fish, Wildlife, and Parks to take immediate action to seek and implement solutions for the long-term management of elk and bison in the Yellowstone ecosystem.

BE IT FURTHER RESOLVED, that the long-term solution be directed toward:

(1) providing historic winter range capable of sustaining a managed migratory population of elk; and

(2) addressing the regulation of elk and bison populations within Yellowstone National Park.

BE IT FURTHER RESOLVED, that the National Park Service and the Montana Department of Fish, Wildlife, and Parks be urgently requested to meet and jointly formulate a plan of immediate action to closely monitor the existing situation, the dangers posed by the situation, and the physical condition of the elk herds in relation to forecast weather and food supply.

BE IT FURTHER RESOLVED, that consideration be given to feeding the elk if a significant portion of the herd is determined to be in danger.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives send copies of this resolution to the Director of the National Park Service; the Chief of the U.S. Forest Service; members of the Montana Fish and Game Commission; the Director of the Montana Department of Fish, Wildlife, and Parks; the Governor; and each member of Montana's Congressional Delegation.

Passed April 13, 1989.

# HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING ALL MONTANA PHYSICIANS TO PARTICIPATE IN THE MONT-SHARE PROGRAM AND TO PROVIDE CARE TO MONTANA'S ELDERLY.

WHEREAS, the Legislature is concerned that all citizens of the State of Montana 65 years of age and older do not have access to physicians' services but should have such access regardless of their ability to pay; and

WHEREAS, the Montana Medical Association has initiated a program known as MONT-SHARE under which physicians participating in the program agree to accept assignment as full payment for services performed for Medicare beneficiaries who do not have the ability to pay for the services; and

WHEREAS, in order for the MONT-SHARE program to be successful, all Montana physicians must agree to participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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(1) That Montana physicians be urged to participate in the MONTSHARE program so that all Medicare beneficiaries have access to physician services.

(2) That a copy of this resolution be sent to the Montana Medical Association and that the Montana Medical Association be requested to print this resolution and distribute it to its membership.

Passed April 12, 1989.

## HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION TO SEEK ADEQUATE FUNDING AND TO CORRECT INEQUITIES CONTAINED IN THE MEDICARE PART B PROGRAM.

WHEREAS, Congress has slashed at least $25 billion from the Medicare program since 1981; and

WHEREAS, the number of Medicare recipients has been increasing; and

WHEREAS, physician fees under Medicare Part B have been frozen since 1984, even though the costs to physicians who provide care have increased during the same period; and

WHEREAS, Medicare recipients are required to pay a greater portion of physician fees because of reduced appropriations to the Medicare program and the increasing number of Medicare recipients and not because physician fees have increased; and

WHEREAS, Montana citizens contribute equal amounts to the Medicare program with citizens of other states, yet Part B payments made to eligible Montana citizens are considerably less than those paid in other states; and

WHEREAS, some Montana physicians accept assignment in all cases, others accept assignment on a case by case basis, and still others do not accept assignment in any case; and

WHEREAS, all Montana physicians, when deciding whether or not to accept assignment, are encouraged to consider the individual circumstances of Medicare beneficiaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Congressional Delegation be requested to seek Medicare funding at a level sufficient to cover the increasing number of Medicare recipients and the increasing costs to physicians who provide care to Medicare recipients.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation be advised that Montana citizens pay the same amounts to Medicare

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as citizens from other states, yet receive lesser amounts when benefits are paid for services.

BE IT FURTHER RESOLVED, that the Montana Congressional Delegation be requested to take whatever action is necessary to correct this inequity.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the Montana Congressional Delegation, senior citizen organizations registered as lobbying organizations before the Montana Legislature, senior citizen organizations known to the Secretary of State, the Montana Medical Association, the Montana Hospital Association, and the Montana Nurses Association.

Passed April 12, 1989.

## HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE PRESIDENT OF THE UNITED STATES TO MAINTAIN ACTIVE AND CORDIAL RELATIONS WITH THE REPUBLIC OF CHINA.

WHEREAS, the Republic of China is a long-time friend, ally, and trade partner of the United States; and

WHEREAS, the people of the Republic of China enjoy a democratic way of life, a high standard of living, and fundamental human rights; and

WHEREAS, Montana adopted the ROC Province of Taiwan as a sister state in 1985; and

WHEREAS, Montana has established a trade office in Taipei; and

WHEREAS, continued friendship and trade with the Republic of China are vitally important to the State of Montana and the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the President of the United States be encouraged to maintain active and cordial relations with the Republic of China.

(2) That a copy of this resolution be sent by the Secretary of State to the President of the United States, the Speaker of the House of Representatives of the United States, the Majority Leader of the United States Senate, and to each member of the Montana Congressional Delegation.

Passed April 12, 1989.

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# HOUSE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO NAME THE NEW FORENSICS BUILDING ON THE WARM SPRINGS CAMPUS OF THE MONTANA STATE HOSPITAL THE "XANTHOPOULOS TREATMENT FACILITY".

WHEREAS, Dr. Harry Xanthopoulos has been employed as a staff psychiatrist at the Montana State Hospital since 1960 and for the past 11 years as staff psychiatrist of the forensic unit; and

WHEREAS, Dr. Xanthopoulos' personal and professional commitment to the Montana State Hospital has been recognized throughout the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Institutions name the new Forensics Building on the Warm Springs Campus of the Montana State Hospital the "Xanthopoulos Treatment Facility".

BE IT FURTHER RESOLVED, that the Senate and the House of Representatives of the State of Montana express their appreciation to Dr. Harry Xanthopoulos for his dedicated service to the Montana State Hospital, patients at the hospital, and to the people of the State of Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this Resolution to Dr. Xanthopoulos.

Passed April 20, 1989.

# HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY ON THE ESTABLISHMENT OF LOCAL COURT DISTRICTS; AND REQUIRING A REPORT TO THE 52ND LEGISLATURE.

WHEREAS, under current law, each city and town in Montana is required to establish a city or municipal court; and

WHEREAS, the judicial workload in some city courts is minimal; and

WHEREAS, despite the minimal workload, a local governing body is required to pay the salary and annual training costs for a city judge or to contract with a justice of the peace to provide judicial services; and

WHEREAS, a restructuring of the city court system in Montana could result in cost savings to cities and towns and could enhance the delivery of judicial services to Montana citizens; and

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WHEREAS, one alternative to the current city court structure is the establishment of local court districts, which would permit two or more cities or towns within the same county to be presided over by the same judge or judges.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to:

(1) examine the current structure and operation of the city and municipal courts in Montana;

(2) identify problems associated with the current judicial delivery system at the city and municipal court level; and

(3) study the feasibility of authorizing cities and towns to establish local court districts, including the method for establishing and terminating the districts; the selection, compensation, qualifications, and jurisdiction of judges within the districts; and the method of funding the districts.

BE IT FURTHER RESOLVED, that the committee report its findings and options for legislative consideration to the 52nd Legislature.

Passed April 19, 1989.

## HOUSE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT THE CHARLES M. RUSSELL PAINTING ENTITLED "THE EXALTED RULER" REMAIN IN MONTANA.

WHEREAS, the State of Montana will celebrate the 100th anniversary of its statehood on November 8, 1989; and

WHEREAS, the people of the state will commemorate the centennial by community, statewide, and regional activities; and

WHEREAS, the State of Montana has a colorful and unique heritage of which all Montanans can be proud; and

WHEREAS, the works of Montana artist, Charles M. Russell, are an important part of that heritage and can influence how the people of the state and the nation view Montana; and

WHEREAS, the Elks Lodge of Great Falls owns the Charles M. Russell painting, The Exalted Ruler, and has offered it for sale to the highest bidder; and

WHEREAS, it is possible that the painting will be removed from the state by a purchaser; and

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WHEREAS, having such paintings as The Exalted Ruler available in Montana for public enjoyment will foster civic pride and tourism; and

WHEREAS, the painting's retention in Montana is intended to symbolize to the state and the nation that Montana is beginning a new era with the celebration of its Centennial in 1989.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognize the importance to the state of the works of Charles M. Russell in general and The Exalted Ruler in particular and urge the state and the people of the state to make every effort possible through all available means to keep The Exalted Ruler in the state in such a manner that the painting is available for public display so that it may be enjoyed by the people of Montana and all Montana visitors.

Passed April 20, 1989.

## HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE STATE'S DRIVING UNDER THE INFLUENCE OF INTOXICANTS LAWS AND EDUCATIONAL AND TREATMENT PROGRAMS RELATING TO DRIVING UNDER THE INFLUENCE; AND REQUIRING A REPORT TO THE 52ND LEGISLATURE.

WHEREAS, stronger laws against driving under the influence of intoxicants (DUI) enacted in 1981 and 1983 have been highly successful in reducing Montana's DUI toll from 4,711 accidents and 211 deaths in 1981 to 2,531 accidents and 128 deaths in 1987; and

WHEREAS, stronger laws, publicity, and education that sharply reduced the DUI toll among lighter, social drinkers have not had and are unlikely in the future to have similar success in reducing DUI accidents among the heavier-drinking, more alcoholic population that now comprises the bulk of Montana's DUI accident problem; and

WHEREAS, drivers under 21 years of age, who reduced their DUI accident toll the most dramatically of any age group following the enactment of stronger DUI laws in the early 1980s, have shown an unexpectedly sharp increase since 1985 in accidents involving heavier drinking, which indicates that the greater use over the past 4 years of age-based programs and measures at the state and local levels has not proven effective in reducing the DUI rate for young drivers; and

WHEREAS, not all judges impose the sentences mandated by the DUI and per se laws; and

WHEREAS, innovative measures requiring careful study and design are needed to further reduce Montana's DUI toll among all age groups, especially among heavier-drinking drivers who require approaches that are more effective, long-term, and treatment-oriented than are now available.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) past and present trends in Montana's DUI accidents, convictions, and fines;

(2) the effect that being forced by the federal government to raise the drinking age to 21 in 1987 has had on the DUI and per se rates and alcohol-related accident levels among drivers under 21 years of age;

(3) judicial compliance with the sentencing mandates in the DUI and per se laws, the extent to which the mandates are and are not complied with by judges, including available statistics on the matter, and the reasons for noncompliance;

(4) the effectiveness of current measures, information courses, and treatment programs in deterring further DUI;

(5) the effectiveness and fairness of current measures, programs, information courses, and educational approaches aimed at reducing DUI by young drivers;

(6) the feasibility of improving and expanding Montana's treatment programs that are designed to treat alcoholics, alcohol abusers, and chronic DUI offenders; and

(7) statutory changes and policies required to further those programs and measures that have proven, or promise to prove, effective in deterring and reducing DUI in the future.

BE IT FURTHER RESOLVED, that the interim committee report the findings of the study to the 52nd Legislature and present options for legislative consideration, if the interim committee determines they are necessary.

Passed April 19, 1989.

## HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CONCENTRATION OF THE LIVESTOCK FEEDING AND PACKING INDUSTRIES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 52ND LEGISLATURE.

WHEREAS, the market share of the top four beef packing companies has increased dramatically from just one-third of the market in 1978 to over two-thirds of the market in 1988; and

WHEREAS, this trend towards concentration and vertical integration of the livestock industry threatens free enterprise and the independence of

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Montana's and the nation's livestock producers, as well as the economic vitality of the communities and states dependent on the livestock industry; and

WHEREAS, continued concentration and vertical integration of the livestock industry may also have serious adverse implications for the health and safety of both workers and consumers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned:

(1) to examine the implications for Montana agriculture of concentration of the livestock feeding and packing industries;

(2) to study initiatives undertaken by other states regarding this issue of concentration in the livestock industry; and

(3) to evaluate appropriate state actions to counteract any adverse problems posed by increased concentration or to prevent further concentration in the livestock industry, as identified in the study.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 52nd Legislature and present options for legislative consideration if the interim committee determines that options are necessary.

BE IT FURTHER RESOLVED, that the Montana Legislature formally request Montana's Congressional Delegation to initiate Congressional field hearings to investigate the implications of concentration in the livestock industry in order to facilitate and formulate appropriate federal responses to this important issue.

Passed April 19, 1989.

## HOUSE JOINT RESOLUTION NO. 47

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM COMMITTEE TO STUDY THE CURRENT STATUS OF VOLUNTEER FIRE SERVICES IN MONTANA; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 52ND LEGISLATURE.

WHEREAS, volunteerism is an important part of fire protection services in Montana and helps ease the financial burden on local governments that provide these services; and

WHEREAS, the increasing duties, responsibilities, and liabilities of fire chiefs and firefighters require increased training that currently approaches reasonable limits of the volunteers' time and personal expense; and

WHEREAS, the limit on reasonable requests for donated resources has been reached; and

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WHEREAS, the consequences of these increasing requirements will be the loss of many dedicated and knowledgeable volunteers; and

WHEREAS, the Montana State Volunteer Firefighters Association has determined that some changes must be made in the present system.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study, with representatives of the volunteer fire services in the state, the fire codes and statutes relating to fire protection services to determine if changes can be made to alleviate some of the demands placed on volunteer fire services.

BE IT FURTHER RESOLVED, that the interim committee report its findings to the 52nd Legislature and present options for legislative consideration if the committee determines that options are necessary.

Passed April 19, 1989.

## HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM COMMITTEE TO STUDY THE IMPLICATIONS OF THE COMMISSION FOR HUMAN RIGHTS' RULING IN WHEELER V. MONTANA DEPARTMENT OF FAMILY SERVICES REGARDING PUBLIC AND PRIVATE ADOPTION SERVICES IN THE STATE; AND REQUIRING THAT THE COMMITTEE REPORT ITS FINDINGS TO THE 52ND LEGISLATURE.

WHEREAS, in 1988, the Commission for Human Rights ruled in Wheeler v. Montana Department of Family Services that the Department had violated Title 49, chapters 2 and 3, MCA, commonly known as the Human Rights Act and the Governmental Code of Fair Practices, with regard to the denial of adoption services on the basis of age, marital status, and religion; and

WHEREAS, as a result of this ruling, the Department of Family Services no longer provides adoption services for infants under 1 year of age; and

WHEREAS, private adoption agencies in the state filed amicus briefs in the case on behalf of the Department; and

WHEREAS, these private agencies are concerned that the Wheeler ruling will be applied to their adoption services; and

WHEREAS, it is in the best interests of prospective adoptive parents and adoptive children that all questions of law be settled so that adoption services by the state and private agencies may be readily available.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

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That an appropriate interim committee be assigned to:

(1) examine current adoption policies and practices of the Department of Family Services;

(2) evaluate existing laws in other states and court cases in other jurisdictions pertaining to the adoption of children, especially infants;

(3) determine whether the Department is entitled to exemptions from the Human Rights Act and the Governmental Code of Fair Practices with regard to use in adoptions of such considerations as age, marital status, or religion;

(4) evaluate the rights of birth parents with respect to the choice of adoptive parents; and

(5) evaluate the effects of the Wheeler ruling on private adoption agencies.

BE IT FURTHER RESOLVED, that the interim committee report its findings to the 52nd Legislature and present options for legislative consideration if the committee determines that options are necessary.

Passed April 19, 1989.

# SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS.

BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

Chapter 1
Administration

**S10-10. Officers of the Senate.** The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

**S10-20. Term of office.** The term of office for the officers and employees of the Senate established by law shall be until the succeeding Legislature is organized. Nothing in this rule shall be construed to mean the staff will be full-time employees during an interim.

**S10-30. President pro tempore and other officers.** (1) The Senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and shall be the judge of the elections, returns, and qualifications of the Senators.

**S10-40. Voting by presiding officer.** Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

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**S10-50. Presiding officer and duties.** (1) The presiding officer of the Senate shall be the President of the Senate who shall be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during such time with all the powers of the President.

(4) The President shall have general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding such passes shall be subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas and payrolls. His signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

**S10-60. Succession.** In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of his political party shall have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for two or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act in his absence, he may do so, or the members of his political party shall have the right to immediately nominate and elect an acting President of the same party.

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(c) An acting President of the Senate shall have the powers of the President and supersede the powers of the President pro tempore.

**S10-70. President-elect.** The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, shall have the responsibility and authority to assume the duties of President of the Senate.

**S10-80. Legislative Administration Committee duties.** (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension and/or retention of such employees.

(5) The chairman of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Council.

**S10-90. Senate employees.** (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) Standing committee chairmen shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chairman, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chairman.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by their respective whip.

**S10-100. Secretary of the Senate and duties.** The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

**S10-110. Sergeant-at-Arms duties.** Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chairman of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to his office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform such duties as required by other rules and the Senate.

**S10-120. Legislative aides.** Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the rules committee. The Senator shall register his aide with the Secretary of the Senate and arrange for the purchase of a nametag with the Sergeant-at-Arms.

**S10-130. Senate journal.** (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

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(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide such information as may be necessary for the preparation of the daily journal for printing by the Legislative Council. Upon approval by the President, the daily journal shall be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Council to be prepared for publication and distribution in accordance with law.

Chapter 2
Decorum

**S20-10. Questions of order.** The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. No Senator may speak more than once on an appeal without the consent of a majority of the Senate.

**S20-20. Questions of privilege.** Questions of privilege in order of precedence are those:

(1) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(2) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

**S20-30. Recognition by chair.** A Senator desiring to speak shall rise and address the presiding officer, and once being recognized, shall speak standing in his or her place. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers. The presiding officer may grant permission for a speaker to leave his or her place to speak.

**S20-40. Senators called to order.** When a Senator has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the Secretary of the Senate.

**S20-50. Communications to Senate.** A communication to the Senate shall be addressed to the President and shall bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

**S20-60. Floor privileges.** (1) When the Senate is in session no person is permitted in the chambers except:

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(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

**S20-70. Distribution of materials on floor.** No materials may be distributed on the Senators' desks in the chamber unless such material bears the signature of the bearer and a Senator and has been approved by the President.

Chapter 3
Committees

**S30-10. Committee appointments.** (1) The Senate shall elect a Committee on Committees consisting of five members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

**S30-20. Standing committees.** The standing committees of the Senate are as follows:

(1) Agriculture, Livestock, and Irrigation

(2) Bills and Journal

(3) Business and Industry

(4) Education and Cultural Resources

(5) Finance and Claims

(6) Fish and Game

(7) Highways and Transportation

(8) Judiciary

(9) Labor and Employment Relations

(10) Legislative Administration

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(11) Local Government

(12) Natural Resources

(13) Public Health, Welfare, and Safety

(14) Rules

(15) State Administration

(16) Taxation

**S30-30. Members of Select Committee on Long-Range Planning.** Members of the Select Committee on Long-Range Planning may participate and vote as members of the Committee on Finance and Claims on issues considered by them as members of the select committee.

**S30-40. Ex officio members.** Each floor leader is an ex officio member of all committees in order to establish a quorum.

**S30-50. Chairman's duties.** (1) The chairman of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and authenticating committee reports and minutes by his signature.

(2) At the close of the session, the chairman shall turn the original and two complete copies of the minutes over to the Secretary of the Senate for distribution as follows:

(a) original to the Montana Historical Society;

(b) copy to the State Law Library of Montana; and

(c) copy to the Legislative Council.

**S30-60. Committee reports to Senate.** (1) Reports of standing committees shall be read on Order of Business No. 2, and no debate may be had on any report unless a minority report has been submitted.

(2) Committee reports may recommend approval, disapproval, or placement on consent calendar, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

**S30-70. Pairs.** Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

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**S30-80. Committee hearings.** (1) No bill or resolution shall be considered or become a law unless referred to a committee and returned therefrom.

(2) A bill may be rereferred at any time before its passage.

**S30-90. Notice of committee hearings — exceptions.** (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 5 legislative days before the transmittal deadline applicable to the subject of the hearing; or

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less than 3 days' notice, the committee chairman shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in joint rule 30-30.

**S30-100. Majority/minority reports.** If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the Senate.

**S30-110. Consent calendar eligibility.** (1) To be eligible for the consent calendar, legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended).

(2) A motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report.

(3) Appropriations or revenue bills may not be recommended for the consent calendar.

**S30-120. Reconsideration in committee.** Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

**S30-130. Committee requested legislation.** (1) At least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(2) The chairman of a committee shall introduce, or shall designate a member of the committee to introduce. legislation requested by the committee.

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(3) When a committee has proposed an amendment, the chairman is the principal sponsor.

Chapter 4
Legislation

**S40-10. Types of legislation.** The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Council and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

**S40-20. Introduction.** (1) Upon receiving a bill or resolution in triplicate from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Council shall be responsible for assuring the preintroduction intent from each Senator and presenting such legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

**S40-30. Additional sponsors.** (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Council with the

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original bill for the inclusion of the names in subsequent printings of the bill or resolution.

**S40-40. Reading limitations.** (1) Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) No bill or resolution shall have more than one reading on the same day except the last legislative day.

(3) No amendment may be offered on third reading.

**S40-50. Rules for questions requiring other than a majority vote.** (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill shall again be placed on third reading in the Senate to determine if the required number of votes has been cast.

**S40-60. Scheduling for second reading.** (1) All bills and resolutions, except those recommended for the consent calendar, which have been reported by a committee, accepted by the Senate and reproduced shall be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) Legislation shall be arranged on the agenda in numerical order unless bills are grouped as companion bills or are placed in order otherwise by the Senate or Committee of the Whole.

**S40-70. Consent calendar procedure.** (1) Legislation reported by committee for placement on the consent calendar shall be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Legislation shall be immediately posted (as soon as it is received as a third reading version) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the President of the Senate will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(3) Any three Senators may submit written objections to the Secretary of the Senate, and the legislation must then be removed from the consent calendar and added to the regular second reading agenda.

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(4) Consent calendar legislation must be added to the end of the third reading agenda and clearly identified as "consent calendar" and voted on individually.

(5) Consent calendar legislation passed on third reading will then be transmitted to the House of Representatives.

Chapter 5
Floor Action

**S50-10. Attendance.** Unless excused, Senators shall be present at every sitting of the Senate and shall vote on questions put before the Senate.

**S50-20. Orders of business.** After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills and consent calendar bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

**S50-30. Limitations on debate.** No Senator may speak more than twice on any one motion or question without unanimous consent of the Senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

**S50-40. Procedure upon offering a motion.** (1) When a motion is offered it shall be restated by the presiding officer. If requested by the presiding officer or a Senator, it shall be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

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**S50-50. Precedence of motions.** (1) When a question is under debate only the following privileged and subsidiary motions shall be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) of this section have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration.

(4) No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

**S50-60. Nondebatable motions.** The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless he submits the question to the Senate for advice or decision; and

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(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

**S50-70. Amending motions.** No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

**S50-80. Previous question.** (1) Except as provided in subsection (2) of this rule, the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

**S50-90. Reconsideration.** (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question.

(2) A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there shall be no further action until the succeeding legislative day.

**S50-100. Dividing a question.** A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

**S50-110. Conference committee reports.** When a conference committee report is filed with the Secretary of the Senate, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

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**S50-120. Second reading.** (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chairman to preside.

(3) All legislation considered in Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation shall remain on second reading.

**S50-130. Committee of the Whole amendments.** (1) All Committee of the Whole amendments shall be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, shall be printed in the journal, along with the name of the sponsor and the vote on each.

**S50-140. Motions in Committee of the Whole.** (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

**S50-150. Committee of the Whole — generally.** (1) The committee may not appoint subcommittees.

(2) The committee may not punish its members for misconduct, but may report disorder to the Senate.

**S50-160. Voting on second reading.** On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless

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excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

**S50-170. Third reading procedure.** (1) All legislation passing second reading shall be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

**S50-180. Senate voting.** (1) A roll call vote shall be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators shall be called alphabetically, unless an electronic voting system is used. A Senator may not vote or change his vote after the decision is announced from the chair. A Senator may not explain his vote until after the decision is announced from the chair.

**S50-190. Pairs.** (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it shall bind the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

**S50-200. Call of the Senate.** (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of such Senators present shall direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the

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Senator shall not be paid any expense payments during his absence and is liable for the expenses incurred in procuring his attendance.

(4) During a call of the Senate, all business shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

Chapter 6
Rules

**S60-10. Senate rules.** (1) A motion to amend or adopt a rule of the Senate shall be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

**S60-20. Mason's Manual of Legislative Procedure.** Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate in all cases not covered by these rules.

**S60-30. Quorum.** A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in such manner and under such penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

Chapter 7
Nominations from the Governor

**S70-10. Nominations.** (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate a person to fill such office.

**S70-20. Introduction and first reading of nominations.** (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee.

(2) The above procedure constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

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**S70-30. Committee process.** (1) (a) The committee shall hold hearings on the nominations after appropriate public notice has been made.

(b) As part of the hearing process, the committee may request biographical information from the Governor for each nominee, if none has been provided.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chairman of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator must request separate consideration of a nominee within three days of receipt of the preliminary standing committee report. The committee chairman shall honor this request.

(4) After waiting three days from the day of distribution of the preliminary standing committee report, the committee chairman shall issue formal standing committee reports for simple resolutions based on recommendations from the Senators and deliver the reports to the Secretary of the Senate.

(5) The Secretary will assign numbers and read the reports under Order of Business No. 2, reports of standing committees, and forward them to the Legislative Council for processing and printing.

(6) Thereafter, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

## Appendix A
## List of Questions Requiring Other than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

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(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature); and

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators).

Passed January 11, 1989.

## SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE 51ST LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 30, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of appointment which has been submitted to the Senate by the Governor, to wit:

As Director of the Department of Commerce, in accordance with the provisions of sections 2-15-111 and 2-15-1801, MCA:

Mr. Michael Letson, Shelby, Montana 59474, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this Resolution pursuant to section 5-5-303, MCA.

Passed February 15, 1989.

## SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE 51ST LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 30TH AND FEBRUARY 2ND, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

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(1) As members of the Montana Fish and Game Commission, in accordance with sections 2-15-124 and 2-15-3402, MCA:

Mr. William Glenn Stratton, Billings, Montana 59105, appointed for a term ending January 2, 1993; and

Mr. Gregory D. Barkus, Kalispell, Montana 59901, appointed for a term ending January 2, 1993.

(2) As member, and chairman, of the State Tax Appeal Board, in accordance with sections 15-2-101, 2-15-201, and 2-15-1015, MCA:

Mr. John A. Rothwell, Great Falls, Montana 59401, appointed for a term ending March 1, 1995.

(3) As Director of the Department of Natural Resources and Conservation in accordance with sections 2-15-111 and 2-15-3301, MCA:

Ms. Karen Barclay, Butte, Montana 59701, appointed to serve at the pleasure of the Governor.

(4) As director of the Department of Family Services, in accordance with sections 2-15-111 and 2-15-2401, MCA:

Mr. Robert L. Mullen, Sidney, Montana 59270, appointed to serve a term at the pleasure of the Governor.

(5) As Commissioner of the Department of State Lands, in accordance with sections 2-15-111 and 2-15-3202, MCA:

Mr. Dennis D. Casey, Shawnee, Kansas 66216, appointed to serve at the pleasure of the Governor.

(6) As member of the Board of Natural Resources and Conservation in accordance with sections 2-15-3302 and 2-15-124, MCA:

Mr. Ed McHatton, Lolo, Montana 59847, appointed to serve until January 2, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this Resolution pursuant to section 5-5-303, MCA.

Passed February 15, 1989.

## SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 3, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

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(1) As District Judge of the Fourth Judicial District in accordance with sections 3-1-1011, 3-1-1013, MCA, and Article VII, section 8, subsection 1, Montana Constitution:

Edward McLean, Missoula; and

(2) As District Judge of the Third Judicial District in accordance with sections 3-1-1011, 3-1-1013, MCA, and Article VII, section 8, subsection 1, Montana Constitution:

Ted L. Mizner, Deer Lodge; and

(3) As District Judge of the Seventh Judicial District in accordance with sections 3-1-1011, 3-1-1013, MCA, and Article VII, section 8, subsection 1, Montana Constitution:

Dale Cox, Glendive; and

(4) As District Judge of the Nineteenth Judicial District in accordance with sections 3-1-1011, 3-1-1013, MCA, and Article VII, section 8, subsection 1, Montana Constitution:

Robert S. Keller, Kalispell.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed March 8, 1989.

## SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED FEBRUARY 13, FEBRUARY 28, AND MARCH 2, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointment designated below, that have been submitted to the Senate by the Governor:

(1) As director of the Department of Agriculture, in accordance with the provisions of section 2-15-111, MCA:

Mr. Everett M. Snortland, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(2) As director of the Department of Fish, Wildlife, and Parks, in accordance with section 2-15-111, MCA:

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Mr. K. L. Cool, Pierre, South Dakota, appointed to serve at the pleasure of the Governor.

(3) As director of the Department of Social and Rehabilitation Services in accordance with section 2-15-111, MCA:

Ms. Julia E. Robinson, Cheyenne, Wyoming, appointed to serve at the pleasure of the Governor.

(4) As members of the Board of Aeronautics, in accordance with section 2-15-1812, MCA:

Mr. Joel Fenger, Chester, Montana, appointed to serve a term ending February 1, 1993.

Mr. Douglas Freeman, Hardin, Montana, appointed to serve a term ending February 1, 1993.

Mr. Russell R. Pankey, Missoula, Montana, appointed to serve a term ending February 1, 1993.

(5) As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Mr. David R. Calahan, Missoula, Montana, appointed to serve a term ending January 2, 1993.

Mr. James McCauley, Boulder, Montana, appointed to serve a term ending January 7, 1993.

Mr. Rick Young, Absarokee, Montana, appointed to serve a term ending January 2, 1993.

(6) As a member of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Mr. Joseph Thares, Helena, Montana, appointed to serve a term ending January 2, 1993.

(7) As members of the Board of Milk Control, in accordance with sections 2-15-124 and 2-15-1802, MCA:

Mr. Arthur Drake, Hamilton, Montana, appointed to serve a term ending January 1, 1993.

Ms. Dixie Hertel, Moore, Montana, appointed to serve a term ending January 1, 1993.

Mr. Milton "Swede" Olson, Whitewater, Montana, appointed to serve a term ending January 1, 1993.

(8) As members of the Board of Oil and Gas Conservation, in accordance with sections 2-15-124 and 2-15-3303, MCA:

Mr. Scott O. Gage, Cut Bank, Montana, appointed to serve a term ending January 2, 1993.

Mr. Stanley Lund, Reserve, Montana, appointed to serve a term ending January 2, 1993.

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Mr. Robert Rhodes, Jr., Billings, Montana, appointed to serve a term ending January 2, 1993.

Mr. David Schaenen, Billings, Montana, appointed to serve a term ending January 2, 1993.

(9) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mr. David E. Aageson, Gildford, Montana, appointed to serve a term ending January 2, 1993.

Mr. John Connors, Whitefish, Montana, appointed to serve a term ending January 2, 1993.

Mr. Warren Vaughan, Billings, Montana, appointed to serve a term ending January 2, 1993.

Mr. James E. Cowan, Seeley Lake, Montana, appointed to serve a term ending January 2, 1993.

(10) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. John (Jack) Salmond, Choteau, Montana, appointed to serve a term ending March 1, 1995.

Mr. Tom Lane, Livingston, Montana, appointed to serve a term ending March 1, 1995.

(11) As a member of the Board of Natural Resources and Conservation, in accordance with section 2-15-3302, MCA:

Ms. Janice Rehberg, Billings, Montana, appointed to serve a term ending January 2, 1993.

(12) As a member of the Board of Regents of Higher Education, in accordance with sections 2-15-1505 and 2-15-1508, MCA:

Mr. Dennis Lind, Missoula, Montana, reappointed to serve a term ending February 1, 1996.

(13) As a member of the Pacific Northwest Electic Power and Conservation Planning Council, in accordance with section 90-4-401, MCA:

Mr. John Brenden, Helena, Montana, appointed to serve at the pleasure of the Governor.

Mr. Stan Grace, Darby, Montana, appointed to serve at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that

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the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed March 27, 1989.

## SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 12, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment designated below, that has been submitted to the Senate by the Governor:

As a member of the Pacific Northwest Electic Power and Conservation Planning Council, in accordance with section 90-4-401, MCA:

Mr. John Brenden, Helena, Montana, appointed to serve at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed March 27, 1989.

## SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 28, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment designated below, that has been submitted to the Senate by the Governor:

As a member of the Board of Pardons, in accordance with section 2-15-2302, MCA:

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Mr. Ian Elliot, Bozeman, Montana, appointed to serve a term ending January 2, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 6, 1989.

## SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 28, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment designated below, that has been submitted to the Senate by the Governor:

As a member of the Board of Pardons, in accordance with section 2-15-2302, MCA:

Mr. Henry E. Burgess, Helena, Montana, reappointed to serve a term ending February 1, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 6, 1989.

## SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED FEBRUARY 13 AND FEBRUARY 28, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointment designated below, that have been submitted to the Senate by the Governor:

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(1) As members of the State Highway Commission, in accordance with the provisions of section 2-15-2502, MCA:

(a) Mr. Thomas R. Conroy, Hardin, Montana, appointed to serve a term ending January 2, 1993.

(b) Mr. Dan Huestis, Great Falls, Montana, appointed to serve a term ending January 2, 1993.

(c) Mr. Dennis Shea, Butte, Montana, appointed to serve a term ending January 2, 1993.

(2) As a member of the Board of Pardons, in accordance with section 2-15-2302, MCA:

Mr. Anthony J. Marra, Havre, Montana, reappointed to serve a term ending January 2, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 6, 1989.

## SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED MARCH 28, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment designated below, that has been submitted to the Senate by the Governor:

As Workers' Compensation Judge, in accordance with section 2-15-1014, MCA:

Judge Timothy Reardon, Helena, Montana, reappointed to serve a term ending July 1, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that

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the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 11, 1989.

## SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 24, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, designated below, that has been submitted to the Senate by the Governor:

As a member of the Board of Public Education, in accordance with sections 2-15-1507 and 2-15-1508, MCA:

Mr. C. John Kinna, Helena, Montana, appointed to serve a term ending February 1, 1996.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 11, 1989.

## SENATE RESOLUTION NO. 12

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED MARCH 13 AND MARCH 30, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointment designated below, that have been submitted to the Senate by the Governor:

(1) As administrator of the Workers' Compensation Division of the Department of Labor and Industry:

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Mr. Patrick Sweeney, Portland, Oregon, appointed to serve at the pleasure of the Governor.

(2) As Director of the Department of Health and Environmental Sciences in accordance with section 2-15-111, MCA:

Mr. Don Pizzini, Great Falls, Montana, appointed to serve at the pleasure of the Governor.

(3) As Director of the Department of Highways, in accordance with section 2-15-111, MCA:

Mr. Larry Larsen, Kalispell, Montana, appointed to serve at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 8, 1989.

## SENATE RESOLUTION NO. 14

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 7, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment designated below, that has been submitted to the Senate by the Governor:

As a member of the Montana Health Facility Authority, in accordance with section 2-15-1815, MCA:

Ms. Dalyce K. Flynn, Townsend, Montana, 59644, reappointed for a term ending 6/30/92.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA.

Passed April 20, 1989.

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# SENATE RESOLUTION NO. 15

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED APRIL 7, 10, 11, AND 17, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointment designated below, that have been submitted to the Senate by the Governor:

(1) As members of the Board of Banking, in accordance with section 2-15-1803, MCA:

Mr. Lynn D. Grobel, Glasgow, Montana 59230, appointed for a term ending 7/1/92.

Mr. Dayton B. Kolstad, Great Falls, Montana 59405, appointed for a term ending 7/1/92.

Mr. J.L. Hensley, Kalispell, Montana 59901, appointed for a term ending 7/1/90.

Mr. William M. Kebe, Jr., Butte, Montana 59701, appointed for a term ending 7/1/90.

Mr. Laurel McAtee, Ennis, Montana 59729, appointed for a term ending 7/1/91.

Mr. Michael J. Milodragovich, Missoula, Montana 59806, reappointed for a term ending 7/1/91.

(2) As members of the Hail Insurance Board, in accordance with section 2-15-3003, MCA:

Mr. Louis Beirwagen, Big Sandy, Montana 59520, appointed for a term ending 4/18/92.

Mr. Allen Schillinger, Vida, Montana 59274, appointed for a term ending 4/18/90.

(3) As members of the Board of Health and Environmental Sciences in accordance with section 2-15-2104, MCA:

Dr. Raymond W. "Rib" Gustafson, Conrad, Montana 59425, appointed for a term ending 1/2/93.

Dr. M.F. Keller, Great Falls, Montana 59401, appointed for a term ending 1/2/93.

Dr. Stuart Reynolds, Havre, Montana 59501, appointed for a term ending 1/2/93.

Mr. David Simpson, Hardin, Montana 59034, appointed for a term ending 1/2/93.

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(4) As members of the Board of Horseracing, in accordance with sections 2-15-121 and 2-15-1881, MCA:

Mr. Steve Christian, Whitefish, Montana 59937, appointed for a term ending 1/20/92.

Mr. Dale Hoffman, Billings, Montana 59102, appointed for a term ending 1/20/92.

Mr. Malvin Merja, Sun River, Montana 59483, reappointed for a term ending 1/20/91.

Mr. Terry Wagner, Miles City, Montana 59301, reappointed for a term ending 1/20/91.

(5) As members of the Human Rights Commission, in accordance with section 2-15-1706, MCA:

Mr. John Kuhr, Havre, Montana 59501, appointed for a term ending 1/2/93.

Ms. Doris M. Poppler, Billings, Montana 59101, appointed for a term ending 1/2/93.

Mr. Ed Regan, Judith Gap, Montana 59453, appointed for a term ending 1/2/93.

Mr. David R. Paoli, Billings, Montana 59101, appointed for a term ending 1/1/91.

(6) As a member of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Mr. Daniel Johns, Kalispell, Montana 59901, appointed for a term ending 1/2/93.

(7) As members of the Montana Lottery Commission, in accordance with section 23-5-1006, MCA:

Mr. William Ware, Helena, Montana 59601, appointed for a term ending 1/1/93.

Ms. Becky Erickson, Glasgow, Montana 59230, appointed for a term ending 1/1/93.

(8) As members of the Science and Technology Development Board, in accordance with section 2-15-1810, MCA:

Ms. Annie Bartos, Helena, Montana 59601, appointed for a term ending 1/1/93.

Mr. Tom Breum, Missoula, Montana 59801, appointed for a term ending 1/1/93.

Dr. John Brower, Butte, Montana 59701, appointed for a term ending 1/1/93.

Mr. Roger Claridge, Kalispell, Montana 59901, appointed for a term ending 1/1/93.

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Ms. Dixie Halverson, Scobey, Montana 59263, appointed for a term ending 1/1/91.

Mr. Chase Hibbard, Helena, Montana 59601, appointed for a term ending 1/1/91.

Mr. Jon Marchi, Polson, Montana 59860, reappointed for a term ending 1/1/91.

Ms. Sue Matthews, Miles City, Montana 59301, appointed for a term ending 1/1/91.

Mr. Ray Tilman, Butte, Montana 59701, appointed for a term ending 1/1/93.

(9) As a member of the Board of Aeronautics, in accordance with section 2-15-1812, MCA:

Mr. Phil "Pete" Pederson, Glasgow, Montana 59230, appointed for a term ending 1/2/93.

(10) As members of the Montana Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Alan Evans, Roundup, Montana 59072, appointed for a term ending 1/2/93.

Mr. Robert E. Carroll, Helena, Montana 59601, appointed for a term ending 1/2/93.

Mr. Gerald Feda, Glasgow, Montana 59230, appointed for a term ending 1/2/93.

Mr. Ted Fletcher, Ashland, Montana 59003, appointed for a term ending 1/2/93.

(11) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Ms. Barbara Foster, Helena, Montana 59601, appointed for a term ending 1/2/93.

Ms. Barbara Kapinos, Bozeman, Montana 59715, appointed for a term ending 1/2/93.

Mr. Bob Poore, Butte, Montana 59701, appointed for a term ending 1/2/93.

(12) As members of the Montana Arts Council, in accordance with sections 2-15-1513, 22-2-102, and 22-2-103, MCA:

Ms. Shirley L. Hanson, Havre, Montana 59501, reappointed for a term ending 2/1/93.

Ms. Sonia M. Hoffman, Helena, Montana 59601, reappointed for a term ending 2/1/93.

Mr. James D. Kriley, Missoula, Montana 59812, reappointed for a term ending 2/1/93.

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Mr. Larry Pirnie, Missoula, Montana 59802, reappointed for a term ending 2/1/93.

Ms. Susan A. Talbot, Missoula, Montana 59801, reappointed for a term ending 2/1/93.

Mr. Larry Williams, Bozeman, Montana 59715, appointed for a term ending 2/1/90.

Ms. Helen Guthrie Miller, Butte, Montana 59701, appointed for a term ending 2/1/92.

(13) As members of the Board of Barbers, in accordance with section 2-15-1856, MCA:

Ms. June D. Baker, Miles City, Montana 59301, appointed for a term ending 10/7/90.

Mr. Lance Olson, Great Falls, Montana 59401, appointed for a term ending 7/1/90.

(14) As members of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Dr. Roger E. Combs, Libby, Montana 59923, reappointed for a term ending 1/9/91.

Harvey L. Demars, Helena, Montana 59601, appointed for a term ending 10/6/90.

Dr. Lou G. Sage, Victor, Montana 59875, appointed for a term ending 1/9/90.

Dr. Arvin Wilson, Whitefish, Montana 59937, reappointed for a term ending 1/2/92.

(15) As members of the Board of Cosmetologists, in accordance with section 2-15-1857, MCA:

Ms. Mary L. Brown, Helena, Montana 59601, appointed for a term ending 7/1/92.

Ms. Marlene J. Sorum, Great Falls, Montana 59403, appointed for a term ending 7/1/91.

(16) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Mrs. Elsie Fox, Miles City, Montana 59301, appointed for a term ending 3/29/92.

John T. Noonan, D.D.S., Great Falls, Montana 59405, reappointed for a term ending 3/29/93.

Mr. Lee M. Wiser, Bozeman, Montana 59715, reappointed for a term ending 3/29/92.

Ms. Fern Flanagan, Helena, Montana 59601, appointed for a term ending 1/4/92

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Dr. Wayne Hansen, Billings, Montana 59102, appointed for a term ending 3/29/94

(17) As members of the State Electrical Board, in accordance with section 2-15-1874, MCA:

Mr. Edgar Justesen, Glendive, Montana 59330, reappointed for a term ending 7/1/92.

Mr. Kenneth Olsen, Billings, Montana 59107, reappointed for a term ending 7/1/93.

(18) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1850, MCA:

Dr. W.A. Higgs, Kalispell, Montana 59901, appointed for a term ending 7/1/91.

Mr. Byron Randall, Kalispell, Montana 59901, appointed for a term ending 7/1/91.

Mr. Douglas E. Rehder, Billings, Montana 59102, appointed for a term ending 7/1/90.

(19) As members of the Board of Trustees of the State Historical Society in accordance with sections 2-15-1512 and 22-3-104, MCA:

Mr. John J. Burke, Butte, Montana 59701, appointed for a term ending 7/1/90.

Mr. Stuart W. Conner, Billings, Montana 59102, reappointed for a term ending 7/1/93.

Ms. Helen L. Hornby, Livingston, Montana 59047, reappointed for a term ending 7/1/93.

Mr. Michael P. Malone, Bozeman, Montana 59717, reappointed for a term ending 7/1/92.

Mr. Harold L. Poulsen, Great Falls, Montana 59404, appointed for a term ending 7/1/92.

Mr. Ward A. Shanahan, Helena, Montana 59624, appointed for a term ending 7/1/92.

Mr. Ronald W. Torstenson, Kalispell, Montana 59901, appointed for a term ending 7/1/93.

(20) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Mr. Michael E. McKee, Hamilton, Montana 59840, appointed for a term ending 1/1/91.

Mr. Russell Dahl, Glasgow, Montana 59230, appointed for a term ending 1/2/93.

Mr. Joe Gerbase, Billings, Montana 59103, appointed for a term ending 1/7/93.

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Mr. George McCallum, Plains, Montana 59859, appointed for a term ending 1/2/93.

(21) As members of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Dr. Richard W. Beighle, M.D., Missoula, Montana 59801, reappointed for a term ending 9/1/92.

Dr. L.A. Campodonico, Miles City, Montana 59301, appointed for a term ending 9/1/90.

Dr. John R. Jacobson, M.D., Butte, Montana 59701, reappointed for a term ending 9/1/91.

Dr. Thomas J. Malee, M.D., Glendive, Montana 59330, reappointed for a term ending 1/1/91.

Ms. Cindy Brown, Helena, Montana 59601, appointed for a term ending 9/1/93.

(22) As members of the Montana Health Facility Authority, in accordance with section 2-15-1815, MCA:

Mr. Sidney K. Brubaker, Terry, Montana 59349, reappointed for a term ending 6/30/92.

Mr. Greg L. Hanson, Missoula, Montana 59802, appointed for a term ending 6/30/92.

Ms. Mary D. Munger, Helena, Montana 59601, reappointed for a term ending 6/30/91.

(23) As members of the Board of Morticians, in accordance with section 2-15-1853, MCA:

Mr. Lyman M. Clayton, III, Wolf Point, Montana 59201, appointed for a term ending 7/1/92.

Mr. Robert G. Ross, Missoula, Montana 59801, appointed for a term ending 7/1/93.

Reverend Jack H. Severns, Great Falls, Montana 59404, appointed for a term ending 7/1/92.

(24) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1845, MCA:

Ms. Carol Ann Andrews, Havre, Montana 59501, reappointed for a term ending 5/28/93.

Ms. Linda M. Smith, Missoula, Montana 59801, appointed for a term ending 5/28/92.

(25) As members of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Ms. Ava Burnett Boschee, Miles City, Montana 59301, appointed for a term ending 7/1/90.

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Ms. Sherri Chatham, Great Falls, Montana 59403, reappointed for a term ending 7/1/91.

Ms. Doris Lorraine Evans, Havre, Montana 59501, reappointed for a term ending 7/1/92.

Dr. Kathleen Ann Long, Bozeman, Montana 59717, appointed for a term ending 7/1/92.

Ms. Donna Mae Snodgrass, Poplar, Montana 59255, appointed for a term ending 7/1/91.

(26) As a member of Board of Optometrists, in accordance with section 2-15-1846, MCA:

Dr. Larry J. Bonderud, Shelby, Montana 59474, appointed for a term ending 4/3/92.

(27) As members of the Board of Pharmacy, in accordance with section 2-15-1843, MCA:

Mr. Rudy Glatz, Winnett, Montana 59087, appointed for a term ending 7/1/92.

Ms. Diana M. Pennell, Lewistown, Montana 59457, reappointed for a term ending 7/1/93.

(28) As members of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Mr. John L. Delano, Helena, Montana 59624, appointed for a term ending 1/1/91.

Dr. John R. Halseth, M.D., Great Falls, Montana 59404, appointed for a term ending 1/1/91.

Ms. Clarisse R. Landry, Missoula, Montana 59801, appointed for a term ending 7/1/90.

Ms. Barbara Reed, Butte, Montana 59701, reappointed for a term ending 7/1/91.

(29) As members of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Thor A. Jackola, Kalispell, Montana 59901, reappointed for a term ending 5/4/92.

Mr. R.W. Lyford, Kalispell, Montana 59901, appointed for a term ending 4/28/91.

Mr. Duane Steinmetz, Billings, Montana 59101, appointed for a term ending 5/4/90.

Mr. Alve Thomas, Helena, Montana 59601, appointed for a term ending 7/1/91.

(30) As members of the Board of Private Security Patrolmen and Investigators in accordance with section 2-15-1891, MCA:

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Mr. A.E. Anderson, Fort Benton, Montana 59442, reappointed for a term ending 8/1/90.

Mr. Clayton Bain, Helena, Montana 59601, reappointed for a term ending 8/1/90.

Mr. David J. Collings, Deer Lodge, Montana 59722, reappointed for a term ending 8/1/91.

Mr. Al Murphy, Missoula, Montana 59801, reappointed for a term ending 8/1/91.

Mr. Jack F. Samson, Billings, Montana 59103, appointed for a term ending 8/1/91.

Mr. Wayne Sargent, Billings, Montana 59102, appointed for a term ending 8/1/89.

(31) As members of the Board of Professional Engineers and Land Surveyors in accordance with section 2-15-1873, MCA:

Mr. Robert S. Custer, Helena, Montana 59604, appointed for a term ending 7/1/90.

Mr. David F. Gibson, Bozeman, Montana 59717, appointed for a term ending 4/23/91.

Mr. Richard E. Guenzi, Glendive, Montana 59330, appointed for a term ending 7/1/91.

Mr. Robert T. Hafferman, Kalispell, Montana 59901, reappointed for a term ending 4/23/92.

Dr. Fred E. Walter, Butte, Montana 59701, appointed for a term ending 4/23/92.

(32) As members of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

Mr. John T. Flynn, Townsend, Montana 59644, appointed for a term ending 9/1/90.

Dr. Michael J. McLaughlin, Great Falls, Montana appointed for a term ending 9/1/91.

Dr. Frank D. Tikalsky, Dillon, Montana 59725, appointed for a term ending 9/1/90.

(33) As members of the Board of Public Accountants, in accordance with section 2-15-1866, MCA:

Mr. Darrell E. Ehrlick, Billings, Montana 59101, appointed for a term ending 7/1/90.

Mr. Everit A. Sliter, Kalispell, Montana 59901, appointed for a term ending 7/1/91.

Mr. James D. Stover, Missoula, Montana 59801, appointed for a term ending 7/1/90.

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Mr. Joseph W. Upshaw, Helena, Montana, 59601, reappointed for a term ending 7/1/91.

(34) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1848, MCA:

Dr. Donald E. Bosshardt, Whitefish, Montana 59937, reappointed for a term ending 7/1/90.

Ms. Margaret Mothershead, Big Timber, Montana 59011, reappointed for a term ending 7/1/90.

Ms. Judith Owens, Butte, Montana, 59701, appointed for a term ending 7/1/90.

Dr. Michael E. Richards, Great Falls, Montana 59405-5193, appointed for a term ending 7/1/89.

Mr. Thomas M. Weisgerber, Bozeman, Montana 59715, appointed for a term ending 7/1/90.

(35) As members of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Ms. Marcia J. Allen, Helena, Montana 59601, appointed for a term ending 5/9/92.

Mr. John B. Dudis, Kalispell, Montana 59901, reappointed for a term ending 5/9/91.

Mr. Rocky Zimdars, Glasgow, Montana 59230, appointed for a term ending 5/9/91.

(36) As members of the Board of Regents of Higher Education, in accordance with sections 2-15-1505 and 2-15-1508, MCA:

Mr. William L. Mathers, Miles City, Montana 59301, appointed for a term ending 2/1/94.

Ms. Lee Ann Riley, Melrose, Montana 59743, appointed for a term ending 6/9/89.

(37) As a member of the Board of Sanitarians, in accordance with section 2-15-1861, MCA:

Mr. Paddy R. Trusler, Polson, Montana 59860, appointed for a term ending 7/1/91.

(38) As members of the Board of Social and Rehabilitation Appeals, in accordance with section 2-15-2203, MCA:

Ms. Judith H. Carlson, Helena, Montana 59601, reappointed for a term ending 1/1/91.

Ms. Bonnie Frey, Helena, Montana 59601, appointed for a term ending 1/2/93.

Ms. Laura Lee, Billings, Montana 59102, appointed for a term ending 1/2/93.

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(39) As members of the Board of Speech Pathologists and Audiologists in accordance with section 2-15-1849, MCA:

Ms. Sally Johnson, Missoula, Montana 59802, appointed for a term ending 12/31/90.

Ms. Marilyn M. Pearson, Helena, Montana 59601, appointed for a term ending 12/31/90.

(40) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Ms. Bernadette A. Opp, Belgrade, Montana 59714, reappointed for a term ending 5/18/93.

Mr. Dale G. Pawlowski, Circle, Montana 59215, appointed for a term ending 5/18/92.

(41) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1852, MCA:

Dr. Anne Johnson, D.V.M., Malta, Montana 59538, appointed for a term ending 7/31/93.

Dr. Gerald J. Killen, Forsyth, Montana 59327, appointed for a term ending 7/31/92.

(42) As a member of Board of Water Well Contractors, in accordance with section 2-15-3307, MCA:

Mr. W.J. Lindsay, Clancy, Montana 59634, reappointed for a term ending 7/1/91.

(43) As members of the Agricultural Loan Authority, in accordance with section 2-15-3011, MCA:

Mr. Bernard Harkness, Dell, Montana 59724, reappointed for a term ending 1/7/95.

Mr. Everett Snortland, Helena, Montana 59601, appointed to serve at the pleasure of the Governor.

Mr. John Swanz, Judith Gap, Montana 59463, appointed for a term ending 1/1/95.

Mr. John Witte, Miles City, Montana 59301, appointed for a term ending 1/1/95.

(44) As members of the Montana Children's Trust Fund Board, in accordance with section 2-15-2402, MCA:

Ms. Darlene Dowen, Kalispell, Montana 59901, appointed for a term ending 1/1/92.

Mr. Arnie Hove, Circle, Montana 59901, appointed for a term ending 1/1/92.

Mr. Richard Kerstein, Billings, Montana 59102, reappointed for a term ending 12/31/92.

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Mr. Randy Koutnik, Great Falls, Montana 59403, appointed for a term ending 1/1/92.

Ms. Dollean Lind, Hardin, Montana 59034, appointed for a term ending 1/1/92.

Mr. Mike Males, Helena, Montana 59601, appointed for a term ending 1/1/92.

Mr. Gaylord Walls, Havre, Montana 59501, appointed for a term ending 1/1/92.

(45) As members of the Board of Crime Control, in accordance with section 2-15-2006, MCA:

Judge Diane Barz, Billings, Montana 59101, appointed for a term ending 1/2/93.

Mr. Don Bjertness, Billings, Montana 59101, appointed for a term ending 1/2/93.

Dr. Gordon Browder, Missoula, Montana 59801, reappointed for a term ending 1/7/93.

Mr. Robert Butorovich, Butte, Montana 59701, reappointed for a term ending 1/2/93.

Mr. John Flynn, Townsend, Montana 59644, appointed for a term ending 1/2/93.

Mr. Gene Kiser, Billings, Montana 59101, reappointed for a term ending 1/2/93.

Mr. Rick Later, Dillon, Montana 59725, appointed for a term ending 1/2/93.

Mr. Rex Manuel, Fairfield, Montana 59436, reappointed for a term ending 1/2/93.

Mr. Don Peterson, Big Arm, Montana 59910, appointed for a term ending 1/2/93.

Ms. Mary Lou Peterson, Eureka, Montana 59917, appointed for a term ending 1/2/93.

Dr. John Pfaff, Whitefish, Montana 59937, reappointed for a term ending 1/2/93.

Justice Jean Turnage, Helena, Montana 59620, reappointed for a term ending 1/2/93.

Mr. Marc Racicot, Helena, Montana 59620, appointed for a term ending 1/1/91.

(46) As a member of the Board of Public Education, in accordance with sections 2-15-1507 and 2-15-1508, MCA:

Ms. Anita A. Johnson, Lewistown, Montana 59457, appointed for a term ending 2/1/95.

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NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver to the Secretary of State a properly certified copy of this Resolution pursuant to section 5-5-303, MCA:

Passed April 20, 1989.

## SENATE RESOLUTION

A RESOLUTION OF THE SENATE OF THE 51ST LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 2ND AND 3RD, 1989, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments which have been submitted to the Senate by the Governor, to wit:

(1) As Director of the Department of Revenue, in accordance with the provisions of sections 2-15-3001 and 2-15-111, MCA:

Ken Nordtvedt, Bozeman, Montana 59715, appointed to serve a term at the pleasure of the Governor.

(2) As Director of the Office of Budget and Program Planning, in accordance with the provisions of section 2-15-111, MCA:

Ray Schakleford, Clancy, Montana 59634, appointed to serve a term at the pleasure of the Governor.

(3) As Director of the Department of Institutions, in accordance with the provisions of sections 2-15-111 and 2-15-2301, MCA:

Curtis Chisholm, Helena, Montana 59601, appointed to serve a term at the pleasure of the Governor.

(4) As Adjutant General of the Department of Military Affairs, in accordance with the provisions of sections 2-15-111 and 2-15-1201, MCA:

Colonel Gary Blair, Great Falls, Montana 59401, appointed to serve a term at the pleasure of the Governor.

(5) As Director of the Department of Labor and Industry, in accordance with the provisions of sections 2-15-111 and 2-15-1701, MCA:

Mike Micone, Helena, Montana 59601, appointed to serve a term at the pleasure of the Governor.

(6) As member of the Board of Natural Resources and Conservation, in accordance with the provisions of sections 2-15-124 and 2-15-3302, MCA:

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Terry Anderson, Bozeman, Montana 59715, appointed to serve a term ending January 1, 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 51st Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this Resolution pursuant to section 5-5-303, MCA.

Passed January 10, 1989.

# HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

## Chapter 1
## Administration

**H10-10. House officers.** (1) House officers include a Speaker, a Speaker pro tempore, majority and minority floor leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

**H10-20. Speaker's duties.** (1) The Speaker is the presiding officer of the House, with authority for administration, order, and decorum.

(2) The Speaker may order the galleries or lobbies cleared in case of disturbance or disorderly conduct.

(3) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-120.

(6) The Speaker is the chief administrative officer of the House, with authority for supervising all House employees. The Speaker may seek the

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advice and counsel of the Legislative Administration Committee regarding employees.

**H10-30. Speaker-elect.** During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

**H10-40. Speaker pro tempore duties.** The Speaker pro tempore shall act as the presiding officer in the absence of the Speaker and shall carry out other duties assigned by the Speaker.

**H10-50. Legislative Administration Committee duties.** (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

**H10-60. Employees.** (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff.

(3) The secretary for a standing or select committee is generally responsible to the committee chairman but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority floor leaders may each appoint a private secretary.

**H10-70. Chief Clerk's duties.** The Chief Clerk, under the supervision of the Speaker, is responsible to:

(1) have custody of all records and documents of the House;

(2) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and deliver them, unbound, to the Legislative Council librarian who will arrange to have them copied on microfilm. A microfilm copy will be provided to the Legislative Council and the Montana State Law Library. The Legislative Fiscal Analyst will receive a microfilm copy of the minutes from the appropriation committee and

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subcommittees. After microfilming, the original minutes will be delivered to the Montana Historical Society.

**H10-80. Sergeant-at-Arms duties.** The Sergeant-at-Arms, under the supervision of the Speaker, has the responsibility to:

(1) maintain order under the direction of the presiding officer;

(2) execute commands and serve all processes of the House; and

(3) receive, distribute, and have custody of House supplies and equipment.

**H10-90. Legislative aides.** (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

**H10-100. Legislative interns.** A legislative intern is a person designated under Title 5, chapter 6, MCA.

**H10-110. House journal.** (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

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(3) The Chief Clerk shall provide to the Legislative Council such information as may be required for the publication of the daily journal. Upon approval by the Speaker, the daily journal shall be reproduced and distributed.

(4) Any representative may examine the daily journal and propose corrections. The speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Council shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

**H10-120. Votes recorded and public.** Every vote of each representative on each substantive question in the House, in any committee, or in committee of the whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

**H10-130. Duration of legislative day.** A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

## Chapter 2
## Decorum

**H20-10. Questions of order and privilege.** (1) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(2) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives.

**H20-20. Limits on lobbying.** Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

**H20-30. Admittance to the House floor.** The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

**H20-40. Dilatory motions or questions.** The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

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**H20-50. Opening and order of business.** The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

**H20-60. Lobbying by employees.** (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

**H20-70. Papers distributed on desks.** A paper concerning proposed legislation may not be placed on representatives' desks unless it is signed and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

## Chapter 3
## Committees

**H30-10. House standing committees.** The following are the House standing committees: Agriculture, Livestock, and Irrigation; Appropriations; Business and Economic Development; Education and Cultural Resources; Fish and Game; Highways and Transportation; Human Services and Aging; Judiciary; Labor and Employment Relations; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; and Taxation.

**H30-20. Chairman's duties.** The chairman of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and certifying committee reports and minutes.

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**H30-30. Officers as members.** The Speaker, majority leader, and minority leader are ex officio, nonvoting members of all House committees. They are not required to be considered in the quorum, but they may count toward establishing a quorum.

**H30-40. Committee action.** (1) When legislation is referred to a committee, it may recommend approval or disapproval, with or without amendment.

(2) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(3) The committee may not report a bill to the House without recommendation.

(4) If a bill is withdrawn from a committee and brought to the House floor without a committee recommendation, the bill must include amendments formally adopted by committee action as reflected in committee minutes for debate on second reading.

**H30-50. Reconsideration in committee.** Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Chief Clerk reconsider its previous action on legislation.

**H30-60. Legislation requested by a committee.** At least two-thirds of all the representatives of a standing committee must have voted in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

**H30-70. Rules committee makeup.** The Speaker will determine the total number of members and the party division, but each party will appoint its own members.

## Chapter 4
## Legislation

**H40-10. Introduction deadlines.** (1) Except as provided in subsection (2), if a representative accepts drafted legislation from the Legislative Council after the deadline for introduction, the representative may not introduce that legislation after 48 hours from the time the bill was accepted from the Legislative Council.

(2) No bill or resolution may be introduced any later than 5 p.m. 5 legislative days prior to the appropriate transmittal deadline.

**H40-20. House resolutions.** (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

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(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

**H40-30. Cosponsors.** (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the three copies.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the chief clerk for the record on Order of Business No. 11.

**H40-40. Introduction.** (1) During a session, proposed House legislation may be introduced in the House by submitting it in triplicate, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. In each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House.

**H40-50. First reading.** Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules.

**H40-60. One reading per day.** Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

**H40-70. Referral.** (1) The Speaker shall refer to a House committee all properly introduced House legislation and transmitted Senate legislation.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee.

**H40-80. Rereferral.** Legislation that is in the possession of the House and that has not been killed may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

**H40-90. Legislation withdrawn from committee.** Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

**H40-100. Standing committee reports.** (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

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(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

**H40-110. Consent calendar procedure.** Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(1) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(2) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received as a third reading version) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any three representatives submit written objections to the placement of the legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate.

**H40-120. Legislation requiring other than a majority vote.** Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to final passage and that normally requires a majority vote.

**H40-130. Amending House second and third reading agendas.** (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

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(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

**H40-140. Second reading.** (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise.

**H40-150. Amendments in the Committee of the Whole.** (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Council, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative.

(3) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

**H40-160. Motions in the Committee of the Whole.** (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

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(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) call for cloture;

(g) rise, rise and report, or rise and report progress and beg leave to sit again; and

(h) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(e) through (1)(g) are nondebatable but may be amended.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

**H40-170. Limits on debate in the Committee of the Whole.** (1) Except for the representative who makes a motion, no representative may speak more than once on the motion and for no more than 5 minutes. The representative who makes the motion may have 5 minutes to close.

(2) After at least two proponents and two opponents have spoken on a question and 45 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the Speaker and the minority floor leader, a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

**H40-180. Special provisions for debate on the general appropriations bill.** (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present his or her portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

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(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

**H40-190. Engrossing.** (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation has been reported correctly engrossed, it may be placed on third reading on the following legislative day. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day.

**H40-200. Third reading.** (1) All bills, joint resolutions, and Senate amendments to House bills and resolutions passing second reading must be placed on third reading.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

**H40-210. Senate legislation in the House.** Senate legislation properly transmitted to the House must be treated as House legislation.

**H40-220. Senate amendments to House legislation.** (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate.

(2) If the House accepts Senate amendments on legislation requiring more than a majority vote for final passage, the House, following approval of the Senate amendments on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

**H40-230. Conference committee reports.** (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report

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on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

**H40-240. Enrolling.** (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation not later than the following legislative day. When enrolled legislation is delivered on the final legislative day, the Speaker shall sign it that day.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

**H40-250. Governor's amendments.** (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

**H40-260. Governor's veto.** (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

## Chapter 5
## Floor Actions

**H50-10. Attendance.** (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by his party leader. This excused absence is not a leave with cause from a call of the House.

**H50-20. Quorum.** (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

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(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

**H50-30. Call of the House without a quorum.** (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

**H50-40. Call of the House with a quorum.** (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

**H50-50. Leave with cause.** (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast a paired vote.

**H50-60. Motions.** (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

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(2) Seconds to motions on the House floor are not required.

(3) Pairs are not allowed on votes that are specified as "representatives present and voting".

**H50-70. Limits on debate of debatable motions.** (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 15 minutes on the same question, except that a representative may have 5 minutes to close.

**H50-80. Nondebatable motions.** (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain; and

(j) all incidental motions, such as motions relating to voting or of a general procedural nature.

**H50-90. Questions.** A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-40.

**H50-100. Amending motions — limitations.** (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

**H50-110. Substitute motions.** (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

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(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee;

(i) to propose amendments; and

(j) to postpone indefinitely.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) No more than one substitute motion is in order at any one time.

**H50-120. Withdrawing motions.** A representative who proposes a motion may withdraw it before it is voted on or amended.

**H50-130. Dividing a question.** A representative may move to divide a question if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

**H50-140. Previous question.** (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

**H50-150. Questions requiring other than a majority vote.** The following questions require the vote specified:

(1) a call of the House with a quorum (one-third of the members present and voting);

(2) a motion to lift a call of the House (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds of the members voting);

(4) a motion to record a vote (one representative);

(5) a motion to spread a vote on the journal (two representatives);

(6) a motion to override the Governor's veto (two-thirds of each house);

(7) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(8) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

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(9) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature);

(10) an appeal of the ruling of the presiding officer (three representatives);

(11) a motion to speak more than once on a debatable motion (unanimous vote);

(12) a motion to overturn an adverse committee report (three-fifths of the members voting);

(13) a motion to rerefer a bill from one committee to another (three-fifths of the members present and voting);

(14) a motion to withdraw a bill from a committee (three-fifths of the members present and voting);

(15) a motion to add legislation to the second or third reading agenda (three-fifths of the members present and voting);

(16) any motion to remove legislation from its normal progress through the House as provided under these rules and reassign it unless otherwise specifically provided by these rules (three-fifths of the members present and voting);

(17) a motion to change a vote (unanimous);

(18) a motion to call for cloture ( two-thirds of the members present and voting); and

(19) a motion to approve leave with cause during a call of the house (two-thirds of the members present and voting).

**H50-160. Reconsideration.** (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

**H50-170. Renewing procedural motions.** The House may renew a procedural motion if further House business has intervened.

**H50-180. Tabling.** (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

**H50-190. Indefinite postponement.** A majority of representatives may indefinitely postpone any matter properly before the House.

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**H50-200. Voting.** (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

**H50-210. Changing a vote.** (1) A representative may move to change his vote within 1 legislative day of the vote. The motion is nondebatable. A unanimous House shall consent to the change. The representative making the motion shall first specify the question and the original vote tally.

(2) An error caused by a malfunction of the voting system may be corrected without a vote.

**H50-220. Pairs.** (1) An excused representative may file a pairing slip to vote on any pairable vote during the excused absence.

(2) An excused representative shall sign a pairing slip that specifies the motion and the desired vote. One representative desiring to vote on the opposite side of the motion shall also sign the pairing slip and may not vote in any other manner on the motion.

(3) The pairing slip must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The pair may be revoked before the vote with the approval of both paired representatives.

(5) Two representatives on either side of the question may pair on a motion requiring other than a majority vote.

**H50-230. Recess.** The House may stand at ease or, by majority vote, may recess under any order of business. The recess may be ended at the call of the chair or at a time specified.

**H50-240. Adjournment for a legislative day.** (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

**H50-250. Adjournment sine die.** A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

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Chapter 6
Rules

**H60-10. House rules.** (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

**H60-20. Tenure of rules.** Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

**H60-30. Suspension of rules.** The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

**H60-40. Supplementary rules.** Mason's Manual of Legislative Procedure (1989) governs House proceedings in all cases not covered by House rules.

**H60-50. Interpreting rules.** The Speaker shall interpret all questions on House rules, subject to appeal by any fifteen representatives to the House Rules Committee. The decision of the House Rules Committee may be appealed to the House by any representative.

**H60-60. Joint rules superseded.** A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Passed January 11, 1989.

# HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING ANHEUSER-BUSCH TO LOCATE A MALTING BARLEY PROCESSING PLANT IN MONTANA.

WHEREAS, it is in the best interest of the State of Montana to encourage industry to process Montana agricultural products within the state; and

WHEREAS, Montana is a major producer of high quality malting barley; and

WHEREAS, Montana has the potential to significantly expand its malting barley production; and

WHEREAS, Montana State University is one of the leading universities in the United States in developing new malting barley varieties; and

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WHEREAS, Anheuser-Busch and Montana barley producers have a longstanding working relationship; and

WHEREAS, Montana has an abundant supply of good water, electricity, and natural gas, all of which are essential to the production of malt; and

WHEREAS, Anheuser-Busch has shown an interest in locating a malting barley processing plant in Montana; and

WHEREAS, the Montana Congressional Delegation and the Governor have been actively involved in encouraging Anheuser-Busch to locate its malting barley processing plant in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the House of Representatives encourages Anheuser-Busch to locate its malting barley processing plant in Montana.

(2) That the House of Representatives stands ready to assist in any appropriate way possible.

BE IT FURTHER RESOLVED, that the Chief Clerk of the House of Representatives send a copy of this resolution to the president of Anheuser-Busch, Inc.

Passed April 10, 1989.

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# APPENDICES

Ballot Issues

(a) Constitutional Amendment No. 18

(b) Constitutional Amendment No. 19

(c) Legislative Referendum No. 106

Special Session 51st Legislature

June 1989

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# BALLOT ISSUES

## CONSTITUTIONAL AMENDMENTS

### CONSTITUTIONAL AMENDMENT 18

By Chapter 343, Laws of 1987, the Legislature proposed an amendment to The Constitution of the State of Montana to eliminate the requirement that the Legislature provide economic assistance and social and rehabilitative services as may be necessary to all inhabitants who are in need of the aid of society by reason of age, infirmities, or misfortune. The proposal allows the Legislature to decide whether to give assistance to those who the Legislature determines are in need and to establish eligibility criteria for welfare services, as well as the duration and level of such services.

Chapter 343 was approved by the following vote at the General Election held November 8, 1988:

| | |
|---|---|
| For: | 182,037 |
| Against: | 165,056 |

The title and text of Chapter 343 follow:

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE XII, SECTION 3, OF THE MONTANA CONSTITUTION TO ALLOW THE LEGISLATURE GREATER DISCRETION IN PROVIDING ECONOMIC ASSISTANCE AND SOCIAL AND REHABILITATION SERVICES TO THOSE IN NEED; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature historically has prescribed the public policy governing the provisions of economic assistance and social and rehabilitation services to those in need; and

WHEREAS, the Legislature is the appropriate body of state government to determine the needs of its residents; and

WHEREAS, the Montana Supreme Court, in a recent decision, determined that the Montana Constitution requires that statutes relating to such assistance and services are reviewable under a heightened scrutiny test; and

WHEREAS, the Legislature finds that it is in the public interest to restore to the Legislature the power to prescribe the provision of economic assistance and social and rehabilitation services to those in need, subject to review under the rational basis test.



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THEREFORE, it is the intent of the Legislature to refer this constitutional amendment to the people of the state in order to restore the historical power of the Legislature to set eligibility level criteria for programs and services, as well as for the duration and level of benefits and services relating to economic assistance and social and rehabilitation services.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Article XII, section 3, of The Constitution of the State of Montana is amended to read:

"**Section 3. Institutions and assistance.** (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature *may* provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune, *are determined by the legislature to be in need.*

*(4) The legislature may set eligibility criteria for programs and services, as well as for the duration and level of benefits and services.*"

Section 2. **Effective date.** If approved by the electorate, this amendment is effective January 1, 1989.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of Montana at the general election to be held November 8, 1988, by printing on the ballot the full title of this act and the following:

☐ FOR allowing the legislature greater discretion to determine the eligibility, duration, and level of economic assistance and social services to those in need.

☐ AGAINST allowing the legislature greater discretion to determine the eligibility, duration, and level of economic assistance and social services to those in need.

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## CONSTITUTIONAL AMENDMENT 19

By Chapter 459, Laws of 1987, the Legislature proposed an amendment to The Constitution of the State of Montana to give the Legislature authority to establish residency requirements for certain judges. This amendment requires supreme court justices to reside within the state, district court judges to reside within the district, and justices of the peace to reside within the county where they are elected or appointed. The residency requirement for all other judges is provided by law.

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Chapter 459 was approved by the following vote at the General Election held November 8, 1988:

| | |
|---|---|
| For: | 224,937 |
| Against: | 116,500 |

The title and text of Chapter 459 follow:

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 9, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE LEGISLATURE MAY ESTABLISH SPECIFIC RESIDENCY REQUIREMENTS FOR JUDGES OTHER THAN SUPREME COURT JUSTICES, DISTRICT COURT JUDGES, AND JUSTICES OF THE PEACE; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Article VII, section 9, of The Constitution of the State of Montana is amended to read:

"**Section 9. Qualifications.** (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. *During* his term of office, *a district court judge shall reside* in the district *and a justice of the peace shall reside in the* county in which he is elected or appointed. *The residency requirement for every other judge must be provided by law.*"

Section 2. **Effective date.** If approved by the electorate, this amendment is effective July 1, 1989.

Section 3. **Submission to electorate.** This amendment shall be submitted to the electors of Montana at the general election to be held November 8, 1988, by printing on the ballot the full title of this act and the following:

☐ FOR allowing the legislature to establish specific residency requirements for judges other than supreme court justices, district court judges, and justices of the peace.

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☐ AGAINST allowing the legislature to establish specific residency requirements for judges other than supreme court justices, district court judges, and justices of the peace.

## LEGISLATIVE REFERENDUM

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### LEGISLATIVE REFERENDUM 106

By Chapter 342, Laws of 1987, the Legislature proposed an amendment to section 20-25-423, MCA, to continue the statewide 6-mill levy for funding the university system through 1999.

Chapter 342 was approved by the following vote at the General Election held November 8, 1988:

| | |
|---|---|
| For: | 227,638 |
| Against: | 127,259 |

The title and text of Chapter 342 follow:

AN ACT CONTINUING THE FUNDING OF THE MONTANA UNIVERSITY SYSTEM BY A LEVY OF NOT TO EXCEED 6 MILLS ON ALL TAXABLE PROPERTY EACH YEAR FOR 10 YEARS; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS OF MONTANA; AMENDING SECTION 20-25-423, MCA; AND PROVIDING EFFECTIVE DATES.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-25-423, MCA, is amended to read:

**"20-25-423. State tax levy — support of public education institutions.** The legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year *1989*. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system."

Section 2. **Submission to electorate.** The question of whether section 1 of this act will become effective shall be submitted to the electors of Montana at the general election to be held November 8, 1988, by printing on the ballot the full title of this act and the following:

☐ FOR giving the legislature authority to levy up to 6 mills for the support of the Montana university system.

☐ AGAINST giving the legislature authority to levy up to 6 mills for the support of the Montana university system.

Section 3. **Effective dates.** (1) If approved by the electorate, section 1 of this act is effective January 1, 1989.

(2) Section 2 and this section are effective on passage and approval.

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Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of specially designated effective dates for the 51st Legislature in regular session.

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| 226 | 1 | Sec. 10, HB 621, L. 1987 |
| | 2 | Effective date |
| 227 | 1 | Repealer |
| | 2 | Effective date |
| 228 | 1 | 7-4-2203 |
| | 2 | Effective date |
| 229 | 1 | 5-2-406 |
| | 2 | 13-10-325 |
| | 3 | 13-10-327 |
| 230 | 1 | 75-6-112 |
| | 2 | Severability |
| | 3 | Extension of authority |
| 231 | 1 | 16-4-207 |
| | 2 | Extension of authority |
| | 3 | Effective date |
| 232 | 1 | 87-1-246 |
| | 2 | 87-1-247 |
| | 3 | 87-1-248 |
| | 4 | 87-1-249 |
| | 5 | 87-1-250 |
| | 6 | Extension of authority |
| | 7 | Effective date |
| 233 | 1 | 40-8-121 |
| 234 | 1 | Repealer |
| 235 | 1 | 61-10-107 |
| | 2 | 61-10-1101 |
| 236 | 1 | 27-5-114 |
| 237 | 1 | Sec. 4, Ch. 468, L. 1987 |
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| 238 | 1 | 15-24-202 |
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| | 3 | Extension of authority |
| 239 | 1 | 2-15-112 |
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| | 3 | 2-18-404 |
| | 4 | Repealer |
| 240 | 1 | 25-13-608 |
| | 2 | Saving clause |
| 241 | 1 | Repealer |
| 242 | 1 | 1-5-101 |
| | 2 | 1-5-102 |
| 243 | 1 | 32-2-401 |
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| 244 | 1 | 39-71-2601 |
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| 246 | 1 | 87-4-609 |
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| 247 | 1 | 50-50-205 |
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| 248 | 1 | 23-5-1007 |
| | 2 | Extension of authority |
| 249 | 1 | 30-10-103 |
| | 2 | 30-10-104 |
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| | 4 | 30-10-210 |
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| | 3 | 70-1-803 |
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| | 5 | 70-1-805 |
| | 6 | 70-1-806 |
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| | 8 | Repealer |
| 251 | 1 | 39-7-603 |
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| 252 | 1 | 15-31-603 |
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| 253 | 1 | 2-2-304 |
| 254 | 1 | 39-71-601 |
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| 255 | 1 | 32-6-103 |
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| 256 | 1 | 7-7-2206 |
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| | 6 | 7-12-4203 |
| | 7 | 20-9-408 |
| | 8 | 20-9-410 |
| | 9 | Saving clause |
| | 10 | Effective date |
| 257 | 1 | 7-4-2503 |
| | 2 | 7-4-2504 |
| | 3 | Effective date |
| 258 | 1 | 45-8-209 |
| 259 | 1 | 37-51-301 |
| | 2 | Extension of authority |
| 260 | 1 | 2-7-506 |
| 261 | 1 | 22-3-601 |
| | 2 | 22-3-602 |
| | 3 | 22-3-603 |
| | 4 | Extension of authority |
| | 5 | Codification instruction |
| 262 | 1 | 27-12-101 |
| | 2 | 27-12-102 |
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| | 35 | 27-12-701 |
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| 263 | 1 | 61-5-214 |
| 264 | 1 | 20-9-471 |
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| 265 | 1 | 33-22-1706 |
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| | 5 | Extension of authority |
| | 6 | Codification instruction |
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| 270 | 1 | 46-17-302 |
| | 2 | 46-18-403 |
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| 275 | 1 | 61-5-121 |
| | 2 | Extension of authority |
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| 276 | 1 | 26-1-803 |
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| 277 | 1 | 3-5-303 |
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| 278 | 1 | 32-1-301 |
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| 279 | 1 | 81-8-216 |
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| 280 | 1 | 20-10-111 |
| | 2 | Extension of authority |
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| 282 | 1 | 19-9-1011 |
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| 283 | 1 | 53-1-401 |
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| 284 | 1 | 90-9-311 |
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| 287 | 1 | 40-5-201 |
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| 294 | 1 | 45-1-205 |
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| 295 | 1 | 31-3-203 |
| | 2 | Extension of authority |
| 296 | 1 | 87-2-501 |
| | 2 | Extension of authority |
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| 297 | 1 | 80-4-531 |
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| 298 | 1 | 37-19-101 |
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| | 7 | Extension of authority |
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| 299 | 1 | 45-5-207 |
| 300 | 1 | 3-11-202 |
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| 303 | 1 | 40-4-212 |
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| 308 | 1 | 7-14-2901 |
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| 313 | 1 | 7-16-2201 |
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| 315 | 1 | 35-9-305 |
| 316 | 1 | 90-3-101(1) |
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| 326 | 1 | 30-9-109 |
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| 328 | 1 | 37-3-322 |
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| 329 | 1 | 18-4-302 |
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| 342 | 1 | 23-5-1016 |
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| 343 | 1 | 20-3-362 |
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| 344 | 1 | 23-5-606 |
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| 345 | 1 | 44-4-301 |
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| 353 | 1 | 17-8-202 |
| 354 | 1 | Repealer |
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| 357 | 1 | 19-4-402 |
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| 370 | 1 | 39-51-303 |
| | 2 | 39-73-102 |
| | 3 | Repealer |
| 371 | 1 | 61-10-155 |
| | 2 | Codification instruction |
| | 3 | Effective date |
| 372 | 1 | 7-4-2525 |
| | 2 | 7-32-2141 |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 373 | 1 | 77-5-202 |
| | 2 | Extension of authority |
| 374 | 1 | 70-31-101 |
| | 2 | 70-31-102 |
| | 3 | 70-31-311 |
| | 4 | 70-31-111 |
| | 5 | 70-31-301 |
| | 6 | Repealer |
| | 7 | Extension of authority |
| | 8 | Codification instruction |
| | 9 | Saving clause |
| | 10 | Severability |
| | 11 | Effective date |
| 375 | 1 | 23-2-510 |
| | 2 | 23-2-612 |
| 376 | 1 | 87-3-221 |
| | 2 | 87-3-209 |
| | 3 | 87-3-222 |
| | 4 | 87-3-210 |
| | 5 | 87-3-224 |
| | 6 | 87-3-225 |
| | 7 | 87-3-226 |
| | 8 | 87-3-227 |
| | 9 | 87-4-603 |
| | 10 | 87-4-606 |
| | 11 | 87-4-607 |
| | 12 | 87-5-715 |
| | 13 | 87-5-703 |
| | 14 | Extension of authority |
| | 15 | Codification instruction |
| | 16 | Effective date |
| 377 | 1 | 50-5-301 |
| | 2 | Sec. 13, Ch. 329, L. 1983 |
| | 3 | Sec. 9, Ch. 477, L. 1987 |
| | 4 | Extension of authority |
| | 5 | Severability |
| | 6 | Effective date |
| 378 | 1 | 61-8-801 |
| | 2 | 61-8-802 |
| | 3 | 61-8-803 |
| | 4 | 61-8-804 |
| | 5 | 61-8-805 |
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| | 11 | 61-1-134 |
| | 12 | 61-5-204 |
| | 13 | 61-5-208 |
| | 14 | 61-8-405 |
| | 15 | Extension of authority |
| | 16 | Codification instruction |
| 379 | 1 | 37-61-211 |
| | 2 | Effective date |
| 380 | 1 | 37-2-201 |
| 381 | 1 | 85-1-203 |
| | 2 | Extension of authority |
| 382 | 1 | 2-15-1866 |
| | 2 | 37-50-101 |
| | 3 | 37-50-305 |
| | 4 | Transition — initial appointments |
| | 5 | Extension of authority |
| | 6 | Effective date |
| 383 | 1 | 2-89-109 |
| | 2 | 2-89-108 |
| | 3 | 2-89-105 |
| | 4 | 2-89-106 |
| | 5 | 2-89-302 |
| | 6 | 2-89-303 |
| | 7 | Extension of authority |
| | 8 | Codification instruction |
| | 9 | Effective date |
| | 10 | Termination |
| 384 | 1 | 75-10-401 |
| | 2 | 75-10-402 |
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| | 5 | 75-10-410 |
| | 6 | 75-10-411 |
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| | 10 | 75-10-447 |
| | 11 | Extension of authority |
| | 12 | Codification instruction |
| | 13 | Saving clause |
| | 14 | Severability |
| | 15 | Effective date |
| 385 | 1 | 22-2-102 |
| | 2 | 22-2-103 |
| 386 | 1 | 75-10-402 |
| | 2 | 75-10-404 |
| | 3 | 75-10-406 |
| | 4 | 75-10-411 |
| | 5 | 75-10-413 |
| | 6 | 75-10-415 |
| | 7 | 75-10-417 |
| | 8 | 75-10-418 |
| | 9 | 75-10-422 |
| | 10 | Extension of authority |
| | 11 | Codification instruction |
| | 12 | Saving clause |

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| | 13 | Severability |
| | 14 | Effective date |
| 387 | 1 | 50-6-301 |
| | 2 | 50-6-302 |
| | 3 | 50-6-323 |
| | 4 | 50-6-304 |
| | 5 | 50-6-306 |
| | 6 | 50-6-307 |
| | 7 | 50-6-308 |
| | 8 | 50-6-325 |
| | 9 | 50-6-313 |
| | 10 | 50-6-326 |
| | 11 | 50-6-327 |
| | 12 | 50-6-324 |
| | 13 | 50-6-314 |
| | 14 | 50-6-315 |
| | 15 | 50-6-316(1) |
| | 16 | 50-6-316(2)-(6) |
| | 17 | Repealer |
| | 18 | Codification instruction |
| | 19 | Saving clause |
| | 20 | Severability |
| | 21 | Effective dates |
| 388 | 1 | 39-71-426 |
| | 2 | 39-71-427 |
| | 3 | 39-71-428 |
| | 4 | Codification instruction |
| | 5 | Extension of authority |
| | 6 | Effective date |
| 389 | 1 | 85-2-316 |
| | 2 | Extension of authority |
| | 3 | Applicability |
| 390 | 1 | 50-16-701 |
| | 2 | 50-16-702 |
| | 3 | 50-16-703 |
| | 4 | 50-16-705 |
| | 5 | 50-16-704 |
| | 6 | Codification instruction |
| | 7 | Effective date |
| 391 | 1 | 13-10-211 |
| | 2 | 13-13-117 |
| | 3 | 13-14-116 |
| | 4 | 13-15-202 |
| | 5 | Effective date |
| 392 | 1 | 20-8-102 |
| | 2 | 20-8-103 |
| | 3 | 20-8-121 |
| | 4 | Extension of authority |
| 393 | 1 | 61-1-318 |
| | 2 | Extension of authority |
| | 3 | Codification instruction |
| 394 | 1 | 7-13-2218 |
| | 2 | Effective date |
| 395 | 1 | 72-6-101 |
| | 2 | 72-6-102 |
| | 3 | 72-6-103 |
| | 4 | 72-6-107 |
| | 5 | 72-6-108 |
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| | 7 | 72-6-110 |
| | 8 | 72-6-114 |
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| | 11 | 72-6-120 |
| 396 | 1 | 53-7-101 |
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| | 9 | 53-7-303 |
| | 10 | 53-7-306 |
| | 11 | 53-7-310 |
| | 12 | 53-7-314 |
| | 13 | 53-7-315 |
| | 14 | 53-7-109 |
| | 15 | Coordination requirements — consolidation of programs authorized |
| | 16 | Repealer |
| | 17 | Extension of authority |
| | 18 | Codification instruction |
| | 19 | Effective dates |
| 397 | 1 | 13-35-235 |
| | 2 | Extension of authority |
| | 3 | Codification instruction |
| 398 | 1 | 23-2-508 |
| | 2 | 23-2-510 |
| | 3 | 23-2-611 |
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| | 5 | 23-2-616 |
| | 6 | 23-2-619 |
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| | 12 | 61-5-121 |
| | 13 | Extension of authority |
| | 14 | Code commissioner instruction |
| | 15 | Effective date |
| 399 | 1 | 41-5-526 |
| | 2 | 41-5-527 |
| | 3 | Extension of authority |
| | 4 | Effective date |
| 400 | 1 | 33-16-103 |
| | 2 | 33-16-231 |
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| | 4 | 33-16-233 |
| | 5 | 33-16-234 |
| | 6 | 33-16-235 |
| | 7 | 33-16-236 |
| | 8 | Extension of authority |
| | 9 | Saving clause |
| | 10 | Severability |
| | 11 | Codification instruction |
| | 12 | Effective date |
| | 13 | Termination |

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| | 2 | 81-8-271 |
| | 3 | 81-8-273 |
| | 4 | 81-8-275 |
| | 5 | 81-8-276 |
| | 6 | 81-8-279 |
| | 7 | Repealer |
| | 8 | Extension of authority |
| | 9 | Effective date |
| 402 | 1 | 70-16-205 |
| | 2 | Saving clause |
| 403 | 1 | 7-32-4122 |
| | 2 | 7-32-4123 |
| 404 | 1 | 61-4-221 |
| | 2 | 61-4-222 |
| | 3 | 61-4-223 |
| | 4 | Extension of authority |
| | 5 | Codification instruction |
| 405 | 1 | 40-4-217 |
| | 2 | 40-4-219 |
| 406 | 1 | 3-5-202 |
| 407 | 1 | 7-7-4227 |
| 408 | 1 | 17-7-502 |
| | 2 | 23-5-1007 |
| | 3 | 23-5-1008 |
| | 4 | 23-5-1016 |
| | 5 | 23-5-1017 |
| | 6 | 23-5-1019 |
| | 7 | 23-5-1020 |
| | 8 | 23-5-1027 |
| | 9 | 23-5-1028 |
| | 10 | Extension of authority |
| | 11 | Effective date |
| 409 | 1 | 87-4-601 |
| | 2 | 87-3-111 |
| | 3 | 87-1-111 |
| | 4 | Extension of authority |
| | 5 | Effective date — termination |
| 410 | 1 | 50-37-102 |
| | 2 | Extension of authority |
| | 3 | Effective date |
| 411 | 1 | 33-2-817 |
| | 2 | Effective date |
| 412 | 1 | 45-5-624 |
| 413 | 1 | 2-15-1849 |
| | 2 | 37-15-102 |
| | 3 | 37-15-103 |
| | 4 | 37-15-305 |
| | 5 | 37-15-308 |
| | 6 | Name change |
| | | 20-7-401 |
| | | 26-1-806 |
| | | 33-1-1102 |
| | | 37-1-101 |
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| | | 37-15-311 |
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| | 7 | Extension of authority |
| 414 | 1 | 2-18-618 |
| 415 | 1 | 46-9-411 |
| | 2 | 46-9-412 |
| | 3 | 46-9-414 |
| | 4 | Extension of authority |
| 416 | 1 | 15-30-303 |
| | 2 | 87-2-106 |
| | 3 | Extension of authority |
| | 4 | Effective date |
| 417 | 1 | 53-6-101 |
| | 2 | Extension of authority |
| 418 | 1 | 31-3-141 |
| | 2 | 31-3-151 |
| | 3 | 31-3-152 |
| | 4 | 40-5-206 |
| | 5 | 53-2-504 |
| | 6 | 40-5-261 |
| | 7 | 40-5-262 |
| | 8 | Codification instruction |
| | 9 | Nonseverability |
| | 10 | Repealer |
| 419 | 1 | 17-4-103 |
| | 2 | 17-4-104 |
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| | 4 | 17-4-106 |
| | 5 | 17-4-107 |
| | 6 | 17-4-108 |
| | 7 | 17-4-111 |
| | 8 | 39-51-3207 |
| | 9 | Extension of authority |
| | 10 | Effective date |
| 420 | 1 | 2-4-305 |
| | 2 | 5-4-402 |
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| | 4 | Effective date — applicability |
| 421 | 1 | 15-25-111 |
| | 2 | 15-25-115 |
| | 3 | 15-25-121 |
| | 4 | 15-25-122 |
| | 5 | Extension of authority |
| 422 | 1 | 39-51-404 |
| 423 | 1 | 76-13-101 |
| | 2 | 76-13-102 |
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| | | 76-13-132 |
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| | 7 | Codification instruction |
| | 8 | Applicability |
| | 9 | Effective date |

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| 424 | 1 | 15-24-1601 |
| | 2 | 15-24-1602 |
| | 3 | 15-24-1603 |
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| | 5 | 15-24-1605 |
| | 6 | 15-24-1606 |
| | 7 | 15-24-1607 |
| | 8 | Codification instruction |
| | 9 | Effective date |
| | 10 | Applicability |
| 425 | 1 | 61-6-103 |
| | 2 | 61-6-301 |
| | 3 | Saving clause |
| | 4 | Extension of authority |
| | 5 | Effective date — applicability |
| 426 | 1 | 85-2-234 |
| | 2 | Severability |
| | 3 | Retroactive and prospective applicability |
| 427 | 1 | 39-71-2401 |
| | 2 | 39-71-2406 |
| | 3 | 39-71-2409 |
| | 4 | 39-71-2410 |
| | 5 | 39-71-2411 |
| | 6 | Extension of authority |
| 428 | 1-4 | Repealed, Ch. 641, L. 1989 |
| 429 | 1 | 23-2-731 |
| | 2 | 23-2-732 |
| | 3 | 23-2-733 |
| | 4 | 23-2-736 |
| | 5 | Repealer |
| | 6 | Effective date — applicability |
| 430 | 1 | 37-8-202 |
| | 2 | Extension of authority |
| | 3 | Effective date |
| 431 | 1 | 87-2-411 |
| | 2 | 87-2-104 |
| | 3 | 87-2-702 |
| | 4 | Extension of authority |
| | 5 | Effective dates |
| 432 | 1 | 85-2-306 |
| | 2 | 85-2-311 |
| | 3 | 85-2-402 |
| | 4 | 85-5-302 |
| | 5 | Extension of authority |
| | 6 | Effective date |
| 433 | 1 | 23-2-803 |
| | 2 | 61-3-510 |
| | 3 | Coordination |
| | 4 | Effective date |
| 434 | 1 | 7-32-2221 |
| | 2 | 41-3-1101 |
| | 3 | 41-3-1103 |
| | 4 | 41-5-206 |
| | 5 | 41-5-306 |
| | 6 | 41-5-308 |
| | 7 | 41-5-523 |
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| | 10 | 41-5-809 |
| | 11 | 53-30-229 |
| | 12 | 41-5-315 |
| | 13 | 41-5-316 |
| | 14 | Sec. 16, Ch. 475, L. 1987 |
| | 15 | Extension of authority |
| | 16 | Codification instruction |
| | 17 | Effective date |
| 435 | 1 | 45-1-205 |
| | 2 | Effective date |
| 436 | 1 | 41-6-101 |
| | 2 | Codification instruction |
| 437 | 1 | 61-8-312 |
| | 2 | 61-10-124 |
| | 3 | Extension of authority |
| | 4 | Effective date |
| 438 | 1 | 3-10-1004 |
| | 2 | 3-12-106 |
| | 3 | 25-34-102 |
| | 4 | 25-34-103 |
| | 5 | 25-34-207 |
| | 6 | 25-35-502 |
| | 7 | 25-35-503 |
| | 8 | 25-35-606 |
| 439 | 1 | 85-7-401 |
| | 2 | 85-7-402 |
| | 3 | 85-7-403 |
| | 4 | 85-7-404 |
| | 5 | 85-7-411 |
| | 6 | 85-7-412 |
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| | 8 | 85-7-1904 |
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| | 10 | 85-7-1908 |
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| | 21 | 85-7-2101 |
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| | 24 | 85-7-2104 |
| | 25 | 85-7-2107 |
| | 26 | 85-7-2108 |
| | 27 | 85-7-2109 |
| | 28 | 85-7-2110 |
| | 29 | 85-7-2112 |
| | 30 | 85-7-2114 |
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| | 33 | Codification instruction |
| | 34 | Saving clause |
| | 35 | Severability |

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| | 36 | Effective date |
| 440 | 1 | 50-18-101 |
| | 2 | 50-18-102 |
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| | 4 | 50-18-104 |
| | 5 | 50-18-106 |
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| | 18 | Repealer |
| | 19 | Extension of authority |
| | 20 | Coordination instruction |
| | 21 | Saving clause |
| | 22 | Severability |
| 441 | 1 | 76-2-101(4) |
| | 2 | 76-2-202(1)(b) |
| | 3 | Codification instruction |
| 442 | 1 | 30-12-101 |
| | 2 | 30-12-102 |
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| | 5 | 30-12-202 |
| | 6 | 30-12-207 |
| | 7 | 30-12-212 |
| | 8 | Extension of authority |
| | 9 | Codification instruction |
| 443 | 1 | 82-4-356 |
| | 2 | Extension of authority |
| | 3 | Codification instruction |
| 444 | 1 | 37-2-101 |
| | 2 | 37-7-401 |
| | 3 | 37-8-202 |
| | 4 | Extension of authority |
| | 5 | Effective date |
| 445 | 1 | 46-23-411 |
| | 2 | Extension of authority |
| | 3 | Applicability |
| 446 | 1 | 61-10-141 |
| | 2 | 80-5-202 |
| | 3 | Extension of authority |
| | 4 | Effective date |
| | 5 | Termination |
| 447 | 1 | 46-18-261 |
| | 2 | 33-24-104 |
| | 3 | Extension of authority |
| | 4 | Codification instruction |
| | 5 | Applicability |
| 448 | 1 | 16-6-305 |
| | 2 | 27-1-710 |
| | 3 | 45-5-622 |
| | 4 | 45-5-623 |
| | 5 | 45-5-624 |
| | 6 | 61-8-407 |
| | 7 | Extension of authority |
| 449 | 1 | 7-12-2171 |
| | 2 | 7-12-2172 |
| | 3 | 7-12-2191 |
| | 4 | 7-12-2193 |
| | 5 | 7-12-4102 |
| | 6 | 7-12-4182 |
| | 7 | 7-12-4183 |
| | 8 | 7-12-4192 |
| | 9 | 7-12-4194 |
| | 10 | 7-12-4203 |
| | 11 | 7-12-4244 |
| | 12 | 7-12-4247 |
| | 13 | 7-13-114 |
| | 14 | 15-16-102 |
| | 15 | 15-16-103 |
| | 16 | Repealer |
| | 17 | Saving clause |
| | 18 | Severability |
| | 19 | Effective date |
| 450 | 1 | 7-12-1133 |
| 451 | 1 | 53-2-822 |
| | 2 | 53-3-108 |
| | 3 | 53-3-109 |
| | 4 | 53-3-113 |
| | 5 | 53-3-205 |
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| | 11 | Extension of authority |
| | 12 | Severability |
| | 13 | Effective date |
| 452 | 1 | 69-3-307 |
| 453 | 1 | 53-6-134 |
| | 2 | Extension of authority |
| | 3 | Codification instruction |
| | 4 | Effective dates |
| 454 | 1 | 19-11-606 |
| | 2 | 19-13-1009 |
| | 3 | 19-13-506 |
| | 4 | Extension of authority |
| | 5 | Codification instruction |
| | 6 | Effective date |
| 455 | 1 | 10-3-701 |
| | 2 | 10-3-702 |
| | 3 | 10-3-703 |
| | 4 | 10-3-704 |
| | 5 | 10-3-705 |
| | 6 | Codification instruction |
| | 7 | Severability |
| | 8 | Effective date |
| 456 | 1 | 50-15-112 |
| | 2 | Extension of authority |
| 457 | 1 | Department to amend rule |
| | 2 | Effective date |
| 458 | 1 | 50-40-104 |
| | 2 | Extension of authority |

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| | 3 | Effective date |
| 459 | 1 | 40-4-210 |
| | 2 | Severability |
| 460 | 1 | 50-17-115 |
| | 2 | Extension of authority |
| | 3 | Codification instruction |
| | 4 | Effective date |
| 461 | 1 | 7-32-2120 |
| | | 7-32-2241 |
| | 2 | 7-32-2242 |
| | 3 | 7-32-2243 |
| | 4 | 7-32-2244 |
| | 5 | 7-32-2245 |
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| | 9 | 7-32-2121 |
| | 10 | 7-32-2123 |
| | 11 | 7-32-2127 |
| | 12 | 7-32-2128 ((1) renum. 7-32-2249) |
| | 13 | 7-32-2132 (renum. 7-32-2250) |
| | 14 | 7-32-2143 |
| | 15 | 7-32-2201 |
| | 16 | 7-32-2202 |
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| | 23 | 7-32-2222 |
| | 24 | 7-32-2231 |
| | 25 | 7-32-2232 |
| | 26 | 7-32-2233 |
| | 27 | 7-32-2234 |
| | 28 | 7-32-4201 |
| | 29 | Codification instruction |
| | 30 | Coordination instruction |
| | 31 | Repealer |
| 462 | 1 | 2-16-404 |
| | 2 | 2-16-405 |
| | 3 | 3-2-104 |
| | 4 | 3-5-211 |
| | 5 | Effective date |
| 463 | 1 | 46-18-204 |
| | 2 | Effective date |
| 464 | 1 | 37-9-301 |
| | 2 | Grandfather clause |
| | 3 | Extension of authority |
| 465 | 1 | 37-30-425 (renum. 37-30-502) |
| | 2 | Extension of authority |
| | 3 | Code commissioner instruction |
| 466 | 1 | 50-40-201 |
| | 2 | 50-40-107 |
| 467 | 1 | 61-11-105 |
| | 2 | Repealer |
| | 3 | Extension of authority |
| 468 | 1 | 85-5-101 |
| | 2 | Effective date |
| 469 | 1 | 15-30-128 |
| | 2 | Codification instruction |
| | 3 | Extension of authority |
| | 4 | Effective date — retroactive applicability |
| 470 | 1 | 45-6-314 |
| | 2 | 46-5-212 |
| | 3 | Codification instruction |
| 471 | 1 | 69-4-201 |
| 472 | 1 | 37-2-104 |
| | 2 | 37-7-103 |
| | 3 | 50-31-307 |
| | 4 | 50-31-103 |
| | 5 | 50-32-205 |
| | 6 | Extension of authority |
| | 7 | Effective date |
| 473 | 1 | 90-4-601 |
| | 2 | 90-4-602 |
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| | 4 | 90-4-606 |
| | 5 | 90-4-607 |
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| | 7 | 90-4-612 |
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| | 9 | Approval of projects |
| | 10 | Authorization of bonds — appropriation of proceeds |
| | 11 | 17-7-502 |
| | 12 | Codification instruction |
| | 13 | Coordination instruction |
| | 14 | Severability |
| | 15 | Requirements for approval of state debt — nonseverability |
| | 16 | Effective date |
| 474 | 1 | 41-3-102 |
| | 2 | Extension of authority |
| | 3 | Effective date — applicability |
| 475 | 1 | 50-9-102 |
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| 560 | 1 | 7-14-2501 |
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| 587 | 1 | Art. IV, sec. 7, Mont. Const. |
| | 2 | Submission to electorate |
| 588 | 1 | 15-10-106 |
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| 589 | 1 | 15-36-101 |
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| 600 | 1 | Sec. 3, Ch. 13, Sp. L. June 1986 |
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| 611 | 1 | 27-5-114 |
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# SESSION LAWS

ENACTED BY THE

Fifty-First Legislature

IN SPECIAL

SESSION

June 19 Through July 14, 1989

STATE OF MONTANA

1989

EXPLANATORY NOTE:

Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics.



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| | | | | TION AID; TO STATUTORILY APPROPRIATE ALL REVENUE ALLOCATED BY LAW TO COUNTY AND STATE EQUALIZATION; TO EXCLUDE ALL SCHOOL LEVIES FROM THE PROPERTY TAX LIMITATIONS OF INITIATIVE MEASURE NO. 105; TO LIMIT TO 180 THE NUMBER OF PUPIL-INSTRUCTION DAYS FOR WHICH FOUNDATION PROGRAM SUPPORT MAY BE RECEIVED; TO REQUIRE DISTRIBUTION OF STATE EQUALIZATION AID IN MONTHLY PAYMENTS; TO INCREASE THE GENERAL BONUS PAYMENTS FOR ENLARGED DISTRICTS; TO REQUIRE SCHOOL DISTRICTS TO USE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; TO PROVIDE FOR A LEGISLATIVE OVERSIGHT COMMITTEE ON SCHOOL FUNDING IMPLEMENTATION TO DIRECT STUDIES ON FURTHER EQUALIZATION OF TRANSPORTATION, INSURANCE, AND CAPITAL EXPENDITURES AND TO PERFORM OTHER DUTIES; TO PROVIDE FOR A TELECOMMUNICATIONS NETWORK FOR EDUCATION; TO REQUIRE THE REVENUE OVERSIGHT COMMITTEE TO STUDY THE CONCEPT OF A GUARANTEED TAX BASE FOR FUNDING ELEMENTARY AND SECONDARY SCHOOLS; TO APPROPRIATE FUNDS FOR EQUALIZATION SUPPORT AND OTHER PURPOSES; TO ELIMINATE TAXATION OF NET PROCEEDS OF OIL AND GAS ON OTHER THAN INTERIM PRODUCTION AND NEW PRODUCTION; TO ESTABLISH A LOCAL GOVERNMENT SEVERANCE TAX IN LIEU OF A TAX ON NET PROCEEDS ON THE PRODUCTION OF OIL AND GAS OTHER THAN INTERIM PRODUCTION AND NEW PRODUCTION; TO PROVIDE FOR A 1-YEAR DELAY IN THE PAYMENT OF LOCAL GOVERNMENT SEVERANCE TAX; TO ALLOCATE THE PROCEEDS OF THE LOCAL GOVERNMENT SEVERANCE TAX ON OIL AND GAS IN THE SAME MANNER AS PROPERTY TAXES ARE DISTRIBUTED; AMENDING SECTIONS 2-7-504, 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-1-501, 15-6-132, 15-10-402, 15-10-412, 15-23-602, 15-23-603, 15-23-605, 15-23-607, 15-23-703, 15-31-121, 15-35-108, 15-36-101, 15-36-102, 15-36-105, 15-36-112, 15-36-121, 17-3-213, 17-5-408, 17-5-704, 17-7-502, 20-3-106, 20-3-205, 20-3-324, 20-3-331, 20-5-305, 20-5-312, 20-6-401, 20-6-506, 20-6-603, 20-6-608, 20-7-414, 20-7-422, 20-7-431, 20-9-104, 20-9-141, 20-9-201, 20-9-212, 20-9-213, 20-9-301, 20-9-303, 20-9-311, 20-9-312, 20-9-315, 20-9-318 THROUGH 20-9-322, 20-9-331, 20-9-333, 20-9-343, 20-9-344, 20-9-346, 20-9-347, 20-9-351 THROUGH 20-9-353, 20-9-501, 20-10-144, 23-5-1027, 90-1-108, 90-6-202, 90-6-212, 90-6-309, AND 90-6-402, MCA, AND SECTION 1, CHAPTER 634, LAWS OF 1989; REPEALING SECTIONS 15-23-604, 15-23-615, 15-23-616, 20-9-105, 20-9-352, 20-9-513, 20-9-531, 20-9-532, AND 90-6-211, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.....Page 2568 |
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# LAWS AND RESOLUTIONS

# OF THE

# STATE OF MONTANA

**ENACTED BY THE**

Fifty-First Legislature

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# SESSION LAWS

## CHAPTER NO. 1

[HB 16]

AN ACT TO REQUIRE SCHOOL DISTRICTS TO USE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; TO PROVIDE AN APPROPRIATION TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO ESTABLISH STANDARD ACCOUNTING AND REPORTING PRACTICES; AMENDING SECTIONS 2-7-504, 20-9-201, 20-9-213, AND 20-9-344, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature that school districts be required to maintain accounting systems based on generally accepted accounting principles and that the superintendent of public instruction adopt rules necessary to implement this requirement. Under 20-3-106, 20-9-102, 20-9-201, 20-9-211, and 20-9-213, the superintendent of public instruction is authorized to supervise public school financial administration and is required to adopt rules establishing requirements for budgeting and financial administration of public school districts, including accounting and reporting requirements. Under 20-9-344, the board of public education has authority to require any reports it considers necessary.

It is further intended that the districts be required to file accurate and timely reports with the superintendent of public instruction. Districts must be required to provide student and school district data as may be required by the superintendent of public instruction concerning the condition of education in Montana, including personnel information, student and school district demographics, assessment of student and school district achievements, and other appropriate educational factors necessary to enable the legislature to assess the equality of educational opportunity provided by the public school districts and to determine the amount of state aid to be distributed to school districts. Districts shall also provide data to meet grant requirements and other national reporting needs.

It is intended that the superintendent of public instruction provide training, forms, and assistance to the districts as necessary to enable the districts to comply with [this act]. Whenever possible, the superintendent of public instruction shall develop methods for collecting educational data electronically, using formats consistent with school district data processing capabilities. The educational data must be maintained in an electronic format easily accessible by other state agencies and the legislature.

It is intended that the superintendent of public instruction employ two additional full-time-equivalent personnel during fiscal year 1990 and three



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full-time-equivalent personnel during fiscal year 1991 for the purpose of establishing standard accounting and reporting practices in the public school districts.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-7-504, MCA, is amended to read:

**"2-7-504. Accounting methods.** *Unless otherwise required by law, the* department shall prescribe the general methods and details of accounting for the receipt and disbursement of all *money* belonging to governmental entities referred to in this part and shall establish in those offices general methods and details of accounting. All governmental entity officers shall conform with the standards prescribed by the department."

Section 2. Section 20-9-201, MCA, is amended to read:

**"20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from *the* fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, and any other funds so designated by the legislature *are* budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in *the* fund. The school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, and any other funds so designated by the legislature *are* nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district except the extracurricular money realized from pupil activities. *Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles.* The superintendent of public instruction has general supervisory authority *as prescribed by law* over the school financial administration provisions, as they relate to elementary and high school districts. *He* shall *adopt* rules necessary to secure compliance with the law."

Section 3. Section 20-9-213, MCA, is amended to read:

**"20-9-213. Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of such district. No person other than the trustees acting as a governing board shall have the authority to expend moneys of the district. In conducting the fiscal business of the district, the trustees shall:

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(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school moneys for each fund maintained by the district in accordance with *generally accepted accounting principles and the* rules prescribed by the superintendent of public instruction. The record of such accounting shall be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district moneys and cause warrants to be issued for the payment of lawful obligations;

(3) have the authority to issue warrants on any budgeted fund in anticipation of budgeted revenues, except that such expenditures shall not exceed the amount budgeted for such fund;

(4) invest any moneys of the district, whenever in the judgment of the trustees such investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC, FSLIC, or NCUA located in the state; or in a repurchase agreement as authorized in 7-6-213. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds shall be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer shall not be subject to ratable distribution laws and shall be done in accordance with the directive from the board of trustees. A district may invest moneys under the state unified investment program established in Title 17, chapter 6.

*(5) cause the district to record every transaction in the appropriate account before the accounts are closed at the end of the fiscal year, in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;*

*(6)* report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts shall be submitted to the county superintendent of each county in which part of the joint district is situated.

*(7)* whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

*(8)* cause the accounting records of the district to be audited annually as required by law; and

*(9)* perform, in the manner permitted by law, such other fiscal duties that are in the best interests of the district."

Section 4. Section 20-9-344, MCA, is amended to read:

**"20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution — conditions of first payment.** (1) The money available for state equalization aid *must* be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings *and* grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law and in a manner that would most effectively meet the financial needs of districts;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it *considers* necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to *the* aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education *may* not increase or decrease the state equalization aid distribution to any district on account of any difference *that* may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

*(3) The board of public education may order the superintendent of public instruction to withhold distribution of state equalization aid from a district when the district fails to:*

*(a) submit reports or budgets as required by law or rules adopted by the board of public education; or*

*(b) maintain accredited status.*

*(4) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.*

*(5)* Should a district receive more state equalization aid than it is entitled to, the county treasurer *shall* return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the department of commerce.

*(6)* The first payment of state equalization aid must be:

(a) based on an estimate of 20% of each district's entitlement; and

(b) distributed by July 15 of the school fiscal year."

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Section 5. **Appropriation.** There is appropriated from the general fund $204,950 for the biennium ending June 30, 1991, to the superintendent of public instruction to establish standard accounting and reporting practices in all Montana public school districts.

Section 6. **Effective date.** [This act] is effective July 1, 1990.

Approved June 30, 1989.

# CHAPTER NO. 2

[SB 17]

AN ACT TO ALLOW THE GOVERNING BODY OF A THIRD-CLASS CITY OR TOWN TO ESTABLISH THE DAYS AND TIMES THAT MUNICIPAL OFFICES ARE OPEN; AMENDING SECTION 7-4-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 7-4-102, MCA, is amended to read:

"**7-4-102. Office hours.** *(1)* Unless otherwise provided by law, every officer *shall* keep his office open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except Saturdays and legal holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires.

*(2) County* and city treasurers may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

*(3) The governing body of a third-class city or town may establish days and times when municipal offices are open to conduct business that are different from the days and times required by subsection (1).*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved July 1, 1989.

# CHAPTER NO. 3

[SB 16]

AN ACT CREATING A JOINT LEGISLATIVE COMMITTEE ON ACCOUNTABILITY AND QUALITY IN EDUCATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [this act], "committee" means the joint legislative committee on accountability and quality in education created in [section 2].

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Section 2. **Joint legislative committee on accountability and quality in education — composition and appointment.** (1) There is a joint legislative committee on accountability and quality in education.

(2) The committee consists of eight members appointed as follows:

(a) four members of the house of representatives appointed by the speaker of the house; and

(b) four members of the senate appointed by the committee on committees of the senate.

(3) No more than two members from each house may be of the same political party.

(4) Members must be appointed by July 15, 1989.

Section 3. **Term of office — vacancies.** (1) A committee member shall serve until [this act] terminates as provided in [section 7].

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

Section 4. **Officers — meetings — quorum — compensation.**

(1) The committee shall choose from its membership a chairman and vice chairman.

(2) The committee shall meet upon the call of the chairman or at the request of any four members.

(3) Five members constitute a quorum to transact business.

(4) A member is entitled to compensation as provided in 5-2-302.

Section 5. **Duties of committee.** (1) The committee shall study proposals for assuring accountability and quality in public elementary and high school programs. These proposals include but are not limited to:

(a) requiring the board of trustees of each elementary and high school district to make public an annual statistical report concerning student academic performance, student assessment scores on standardized tests, teacher and administrator attendance, total number of teachers, administrators, and noncertified personnel employed, number of student dropouts, and other relevant data;

(b) requiring elementary and high schools to use generally accepted accounting principles when reporting their expenditures and receipts;

(c) creating an incentive pay program for elementary and high school teachers;

(d) permitting elementary and high school students to attend school outside their resident districts;

(e) permitting high school seniors to be reimbursed for the cost of attending courses at another high school or at a postsecondary educational institution; and

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(f) establishing a specialized instructor certification program to permit competent individuals to teach in their areas of expertise.

(2) In addition to the duties provided for in subsection (1), the committee shall develop a definition of a basic system of free quality public elementary and secondary schools and specify the state's responsibility to fund and to distribute in an equitable manner its share of the cost of the system as provided in the Montana constitution.

(3) The committee shall report its findings, options for legislative consideration, and any proposed legislation to the governor, 52nd legislature, and board of public education.

Section 6. **Staff assistance.** The legislative council shall provide staff assistance to the committee.

Section 7. **Termination.** [This act] terminates July 1, 1991.

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved July 10, 1989.

# CHAPTER NO. 4

[HB 6]

AN ACT TO INCREASE BY 3 PERCENT THE MAXIMUM GENERAL FUND BUDGET SCHEDULES FOR ELEMENTARY SCHOOLS AND HIGH SCHOOLS FOR SCHOOL FISCAL YEAR 1989-90; TO APPROPRIATE FUNDS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR STATE EQUALIZATION AID; AMENDING SECTIONS 20-9-316 AND 20-9-317, MCA; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 20-9-316, MCA, is amended to read:

**"20-9-316. Elementary school maximum budget schedule for 1989-90.** (1) For each elementary school having an ANB of nine or fewer pupils, the maximum *is $20,763* if *the* school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum *is $20,763* plus *$868* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum *is $34,033* plus *$868* per pupil on the basis of the average number belonging over 14.

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(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum *is $28,573* plus *$868* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum *is $45,619* plus *$543* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum, on the basis of the total pupils (ANB) in the district, for elementary pupils *is* as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$2,016 must* be decreased at the rate of *$1.96* for each additional pupil until the total number (ANB) *reaches* 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$1,898 must* be decreased at the rate of *$1.79* for each additional pupil until the ANB *reaches* 300 pupils.

(c) For a school having an ANB of more than 300 pupils, the maximum *may* not exceed *$1,541* for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools *must* be computed on the basis of the amount allowed *in this section* on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town *must* be treated as one school for the purpose of this schedule."

Section 2. Section 20-9-317, MCA, is amended to read:

**"20-9-317. High school maximum budget schedule for 1989-90.** (1) For each high school having an ANB of 24 or fewer pupils, the maximum *is $118,290.*

(2) For a *high* school having an ANB of more than 24 pupils, the maximum *of $4,929 must* be decreased at the rate of *$26.88* for each additional pupil until the ANB *reaches* 40 pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$4,499 must* be decreased at the rate of *$26.88* for each additional pupil until the ANB *reaches* 100 pupils.

(4) For a school having an ANB of more than 100 pupils, *the* maximum of *$2,886 must* be decreased at the rate of *$4.50* for each additional pupil until the ANB *reaches* 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of *$2,436 must* be decreased by *$2.47* for each additional pupil until the ANB *reaches* 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$2,189 must* be decreased at the rate of *45* cents *for each additional pupil* until the ANB *reaches* 600 pupils.

(7) For a school having an ANB *of more than* 600 pupils, the maximum *may* not exceed *$2,053* per pupil.

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(8) The maximum per pupil for all pupils (ANB) and for all high schools *must* be computed on the basis of the amount allowed *in this section* on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, *must* be treated as one school for the purpose of this schedule."

Section 3. **Appropriation.** (1) All revenue received under the provisions of 20-9-343 is appropriated to the superintendent of public instruction for the fiscal year ending June 30, 1990, for state equalization aid for the school fiscal year ending June 30, 1990.

(2) Any money remaining as of June 30, 1989, and any money accruing as of June 30, 1990, in the education trust fund account established in 90-6-202(3) is appropriated to the superintendent of public instruction for the fiscal year ending June 30, 1990, for state equalization aid for public schools.

Section 4. **Effective date.** [This act] is effective July 1, 1989.

Approved July 11, 1989.

# CHAPTER NO. 5

[HB 23]

AN ACT TO EXEMPT ECONOMIC DEVELOPMENT LEVIES FROM THE PROPERTY TAX FREEZE IF THE AUTHORIZATION FOR THE LEVY OCCURRED PRIOR TO DECEMBER 31, 1990; AMENDING SECTIONS 15-10-412 AND 90-5-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-10-412, MCA, is amended to read:

**"15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

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(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

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(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8)*; and*

*(i) levies for economic development authorized pursuant to 90-5-112(4).*

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

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(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 2. Section 90-5-112, MCA, is amended to read:

**"90-5-112. Economic development levy.** (1) Upon an affirmative vote of a majority of the qualified voters voting in a city, county, or town on the question of whether the governing body may levy a tax for economic development, the governing body of that city, county, or town is authorized to levy in any one election up to 1 mill upon the taxable value of all the property in the county, city, or town subject to taxation for the purpose of economic development for a period not to exceed 5 years.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

*(4) The authorization to levy up to 1 mill for the purpose of economic development, as provided in subsection (1), is not subject to the provisions*

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*of Title 15, chapter 10, part 4, if voter authorization for the levy occurred prior to December 31, 1990."*

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved July 11, 1989.

# CHAPTER NO. 6

[HB 24]

AN ACT ALLOWING TAXING UNITS THAT IMPOSE PROPERTY TAX LEVIES UNDER THE AUTHORITY OF TITLE 20, MCA, GOVERNING SCHOOLS, COMMUNITY COLLEGES, AND OTHER EDUCATIONAL ENTITIES, TO RAISE, WITH VOTER APPROVAL, THE MAXIMUM NUMBER OF MILLS THEY MAY LEVY TO A 3-YEAR AVERAGE IF THE REVENUE RAISED IN 1986 WAS LESS THAN THE REVENUE RAISED IN EITHER 1984 OR 1985; AMENDING SECTION 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-10-412, MCA, is amended to read:

**"15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

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(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the

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procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

*(a)* the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

*(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986.*

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments; and

(h) revolving funds to support any categories specified in this subsection (8).

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

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(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 2. **Effective date — retroactive applicability.** (1) [This act] is effective on passage and approval.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved July 11, 1989.

# CHAPTER NO. 7

[HB 25]

AN ACT TO ALLOW TAXING UNITS SERVED BY A CITY-COUNTY BOARD OF HEALTH TO INCREASE, WITH VOTER APPROVAL, THE MAXIMUM NUMBER OF MILLS THEY MAY LEVY TO A 3-YEAR AVERAGE IF THE 1986 LEVY WAS LESS THAN THE NUMBER OF MILLS LEVIED IN EITHER 1984 OR 1985; TO AUTHORIZE THE GOVERNING BODIES OF THE TAXING UNITS SERVED BY A CITY-COUNTY BOARD OF HEALTH, IF NECESSARY TO ENSURE PUBLIC HEALTH, TO LEVY UP TO THE 5-MILL STATUTORY MAXIMUM MILL LEVY TO SUPPORT THE CITY-COUNTY BOARD OF HEALTH; AMENDING SECTION

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15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-10-412, MCA, is amended to read:

**"15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

*(a)* the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

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*(b) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.*

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments; and

(h) revolving funds to support any categories specified in this subsection (8).

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) *(a)* The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

*(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support a city-county board of health as provided*

*in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.*

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 2. **Effective date — retroactive applicability.** (1) [This act] is effective on passage and approval.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988.

Approved July 11, 1989.

# CHAPTER NO. 8

[HB 4]

AN ACT REQUIRING ASSESSMENT OF A MOTOR VEHICLE FOR TAX PURPOSES TO INCLUDE A PERTINENT ADDITION OR DEDUCTION FOR A DIESEL ENGINE; AMENDING SECTION 61-3-503, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 61-3-503, MCA, is amended to read:

**"61-3-503. (Temporary) Assessment.** (1) Except as provided in 61-3-520 and subsection (2) of this section, the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing the application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. A motor vehicle is not subject to assessment, levy, and taxation more than once in each year.

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(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the county assessor, and thereafter depreciated 10% per year until a value of $500 is reached, not including additions or deductions for options and mileage *but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines*; and a lien for taxes and fees due on the vehicle shall occur on the anniversary date of the registration and shall continue until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Motorcycles and quadricycles shall be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value shall remain at that minimum so long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value shall remain at that amount so long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in

15-1-101(1). **(Terminates December 31, 1993—sec. 11, Ch. 525, L. 1989.)**

**61-3-503. (Effective January 1, 1994) Assessment.** (1) Except as provided in subsection (2), the following apply to the taxation of motor vehicles:

(a) Except as provided in subsections (1)(c) through (1)(e), a person who files an application for registration or reregistration of a motor vehicle shall before filing such application with the county treasurer submit the application to the county assessor. The county assessor shall enter on the application in a space to be provided for that purpose the market value and taxable value of the vehicle as of January 1 of the year for which the application for registration is made.

(b) Except as provided in subsection (1)(c), motor vehicles are assessed for taxes on January 1 in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state. In no event may any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(c) Vehicles subject to the provisions of 61-3-313 through 61-3-316 shall be assessed as of the first day of the registration period, using the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or, for a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the county assessor, and thereafter depreciated 10% per year until a value of $500 is reached, not including additions or deductions for options and mileage *but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines*; and a lien for taxes and fees due on the vehicle shall occur on the anniversary date of the registration and shall continue until the fees and taxes have been paid. If the value shown in any of the appraisal guides listed in this section is less than $500, the department shall value the vehicle at $500.

(d) Motorcycles and quadricycles shall be assessed, using the greater of the following:

(i) $250; or

(ii) the average trade-in or wholesale value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the applicable National Edition of the N.A.D.A. Motorcycle/Moped/ATV Appraisal Guide or N.A.D.A. Recreational Vehicle Appraisal Guide, not including additions or deductions for options and mileage.

(e) If a vehicle assessed under subsection (1)(c) or (1)(d) is not originally listed in the applicable N.A.D.A. guide, the department of revenue or its agent shall depreciate the original f.o.b. factory list price, f.o.b. port-of-entry list price, or the manufacturer's suggested list price, using the following methods:

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(i) if the new car sales tax has been previously paid and the vehicle is less than 1 year in age, the depreciation percentage shall be 20%; or

(ii) if the vehicle is 1 year or older in age and it is not listed in any of the appraisal guides listed in this section, the department of revenue shall determine the depreciation percentage to approximate the average wholesale or trade-in values in the current N.A.D.A. guides referred to in this subsection. For purposes of this subsection (1), the age of the vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year of assessment.

(f) When a minimum value of $500 is reached, the value shall remain at that minimum so long as the vehicle is registered.

(g) If a previously registered vehicle is no longer listed in the applicable N.A.D.A. guide, the department or its agent shall depreciate the value of the vehicle at the rate of 10% a year until a minimum amount of $500 is attained, and the value shall remain at that amount so long as the vehicle is registered.

(2) The provisions of subsections (1)(a) through (1)(g) do not apply to motor homes, travel trailers, campers, or mobile homes as defined in 15-1-101(1)."

Section 2. **Effective date.** [This act] is effective January 1, 1990.

Approved July 14, 1989.

# CHAPTER NO. 9

[HB 56]

AN ACT TO REVISE THE WORKERS' COMPENSATION ACT TO CONTINUE THE FREEZE ON MAXIMUM WEEKLY COMPENSATION BENEFITS PAYABLE BY AN INSURER; TO EXTEND THE PERIOD FOR WHICH A FREEZE IS IMPOSED ON THE MAXIMUM FEE SCHEDULE FOR MEDICAL, HOSPITAL, AND RELATED SERVICES; TO APPROPRIATE $20 MILLION FROM THE GENERAL FUND, TO REDUCE THE UNFUNDED LIABILITY IN THE STATE COMPENSATION MUTUAL INSURANCE FUND; TO REQUIRE QUARTERLY ESTIMATED PAYMENTS BY ALL TAXPAYERS SUBJECT TO CORPORATE LICENSE OR INCOME TAX WHO HAVE ANNUAL STATE TAX LIABILITIES IN EXCESS OF $5,000; TO PROVIDE FOR INTEREST PENALTIES FOR UNDERPAYMENT; TO EXEMPT RATE CHANGES MADE IN RESPONSE TO THIS ACT FROM THE 30-DAY NOTICE REQUIREMENT; AMENDING SECTIONS 15-31-101, 15-31-502, 39-71-701 THROUGH 39-71-704, 39-71-721, 39-71-1024, AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Section 1. Section 15-31-101, MCA, is amended to read:

**"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and

business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. *Except as provided in 15-31-502, this* tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 2. Section 15-31-502, MCA, is amended to read:

**"15-31-502. Assessment and payment of tax — estimated tax payment.** *(1)* All taxpayers shall compute the amount of tax payable under this chapter and shall remit *the* amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period.

*(2) Each corporation shall make estimated tax payments if its annual estimated tax can reasonably be expected to be $5,000 or more. The estimated payments must be made in installments as follows:*

| *(a) If the $5,000 threshold is met or exceeded:* | *The following percentages of the estimated tax must be paid on the 15th day of the applicable months:* | | | |
|---|---|---|---|---|
| | *4th month* | *6th month* | *9th month* | *12th month* |
| *Before the 1st day of the 4th month of the taxable year:* | *25%* | *25%* | *25%* | *25%* |
| *After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year:* | | *33 ⅓%* | *33 ⅓%* | *33 ⅓%* |

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| | | |
|---|---|---|
| *After the last day of the 5th month and before the 1st day of the 9th month of the taxable year:* | *50%* | *50%* |
| *After the last day of the 8th month and before the 12th month of the taxable year:* | | *100%* |

*(b) If after paying any installment of estimated tax the taxpayer makes a new estimate, the amount of each installment, if any, is the amount that would have been paid if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing:*

*(i) the difference between:*

*(A) the amount of estimated tax required to be paid before the date on which the new estimate was made; and*

*(B) the amount of estimated tax that would have been required to be paid before that date if the new estimate had been made when the first estimate was made:*

*(ii) by the number of installments remaining to be paid on or after the date on which the new estimate was made.*

*(3) The application of this section to taxable years of less than 12 months must be in accordance with rules adopted by the department.*

*(4) At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment."*

Section 3. **Estimated payments — interest penalty — tax returns — penalty — interest.** (1) For corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there is assessed a 20% per annum underpayment interest penalty calculated as follows:

(a) For purposes of this subsection (a), the amount of underpayment is in excess of the amount of the installment that would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for the year over the amount, if any, of the installment paid on or before the last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax were the lesser of the following:

(i) the tax shown on the return of the corporation for the preceding taxable year if a return showing a liability for tax was filed for the preceding taxable year and the preceding year was a taxable year of 12 months;

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(ii) an amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; or

(iii) an amount equal to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

(A) for the first 3 months of the taxable year in the case of the installment required to be paid in the 4th month;

(B) for the first 3 months or for the first 5 months of the taxable year in the case of the installment required to be paid in the 6th month;

(C) for the first 6 months or for the first 8 months of the taxable year in the case of the installment required to be paid in the 9th month; and

(D) for the first 9 months or for the first 11 months of the taxable year in the case of the installment required to be paid in the 12th month of the taxable year.

(c) For purposes of subsection (1)(b)(iii), the taxable income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b)(iii); and

(ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b)(iii).

(d) Notwithstanding subsections (1)(a) through (1)(c), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount under this subsection (e) for any installment:

(i) take the taxable income for all months during the taxable year preceding the filing month;

(ii) divide the amount by the base period percentage for all months during the taxable year preceding the filing month;

(iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

(iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for the corresponding months in each

of the 3 preceding taxable years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70%; and

(iv) the department of revenue may by rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) If the tax for any corporation is not paid on or before the due date of the return as provided in 15-31-111(2), there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was due to reasonable cause and not to neglect.

(3) If any tax due under this section is not paid when due, by reason of extension granted or otherwise, interest is added to the tax due at the rate of 12% a year from the due date until paid.

Section 4. Section 39-71-701, MCA, is amended to read:

**"39-71-701. Compensation for temporary total disability.** (1) Subject to the limitation in 39-71-736, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits *may* not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits *must* be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, *1991*, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of $299 established July 1, 1986."

Section 5. Section 39-71-702, MCA, is amended to read:

**"39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily totally disabled and is unable to return to work due to injury, the worker is eligible for permanent total disability

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benefits. At an insurer's request, an evaluation of all options under 39-71-1012 must be made before permanent total disability status is determined. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710 and 39-71-1026.

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, *1991*, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of $299 established July 1, 1986."

Section 6. Section 39-71-703, MCA, is amended to read:

**"39-71-703. Compensation for permanent partial disability — impairment awards and wage supplements.** (1) The benefits available for permanent partial disability are impairment awards and wage supplements. A worker who has reached maximum healing and is not eligible for permanent total disability benefits but who has a medically determined physical restriction as a result of a work-related injury may be eligible for an impairment award and wage supplement benefits as follows:

(a) The following procedure must be followed for an impairment award:

(i) Each percentage point of impairment is compensated in an amount equal to 5 weeks times 66 ⅔% of the wages received at the time of the injury, subject to a maximum compensation rate of one-half of the state's average weekly wage at the time of injury.

(ii) When a worker reaches maximum healing, an impairment rating is rendered by one or more physicians as provided for in 39-71-711. Impairment benefits are payable beginning the date of maximum healing.

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(iii) An impairment award may be paid biweekly or in a lump sum, at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements set forth in 39-71-741, except that lump-sum conversions for benefits not accrued may be reduced to present value at the rate set forth by the department in 39-71-741(5).

(iv) If a worker becomes eligible for permanent total disability benefits, the insurer may recover any lump-sum advance paid to a claimant for impairment, as set forth in 39-71-741(5). Such right of recovery does not apply to lump-sum benefits paid for the period prior to claimant's eligibility for permanent total disability benefits.

(v) If a worker suffers additional injury, an impairment award payable for the additional injury must be reduced by the amount of a previous award paid for impairment to the same site on the body.

(b) The following procedure must be followed for a wage supplement:

(i) A worker must be compensated in weekly benefits equal to 66 2/3% of the difference between the worker's actual wages received at the time of the injury and the wages the worker is qualified to earn in the worker's job pool, subject to a maximum compensation rate of one-half the state's average weekly wage at the time of injury.

(ii) Eligibility for wage supplement benefits begins at maximum healing and terminates at the expiration of 500 weeks minus the number of weeks for which a worker's impairment award is payable, subject to 39-71-710. A worker's failure to sustain a wage loss compensable under subsection (1)(b)(i) does not extend the period of eligibility. However, if a worker becomes eligible for temporary total disability, permanent total disability, or total rehabilitation benefits after reaching maximum healing, the eligibility period for wage supplement benefits is extended by any period for which a worker is compensated by those benefits after reaching maximum healing.

(2) The determination of permanent partial disability must be supported by a preponderance of medical evidence.

(3) Notwithstanding subsection (1), beginning July 1, 1987, through June 30, *1991*, the maximum weekly compensation benefits for permanent partial disability may not exceed $149.50, which is one-half the state's average weekly wage established July 1, 1986."

Section 7. Section 39-71-704, MCA, is amended to read:

**"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained.

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(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the form and at the times required by the department. The department shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the department shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, *through December 31, 1991*, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), *beginning January 1, 1988, through December 31, 1991*, the hospital rates payable by insurers must be limited to those set in January 1988."

Section 8. Section 39-71-721, MCA, is amended to read:

**"39-71-721. Compensation for injury causing death — limitation.** (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116(2)(a) through (2)(d), weekly compensation benefits for an injury causing death are 66 ⅔% of the decedent's wages. The maximum weekly compensation benefit may not exceed

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the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116(2)(e) and (2)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 ⅔% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(2)(b) through (2)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116(2).

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, *1991*, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, *1991*, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

Section 9. Section 39-71-1024, MCA, is amended to read:

**"39-71-1024. Wage supplement and partial rehabilitation benefits.** (1) A worker who is in a rehabilitation program under 39-71-1019 in accordance with and for the maximum duration established by a final order of determination by the department is eligible to receive the following benefits:

(a) wage supplement benefits as provided in 39-71-703 but with the rate based on 66 ⅔% of the worker's actual wages received at the time of injury, subject to a maximum of one-half the state's average weekly wage; and

(b) a partial rehabilitation benefit that, together with the wage supplement provided in subsection (1)(a), provides the worker with weekly benefits equal to the worker's temporary total disability rate.

(2) After the worker completes the rehabilitation program, the worker's further eligibility, if any, for wage supplement benefits under 39-71-703 is

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reduced by the number of weeks of wage supplement benefits received under subsection (1)(a).

(3) Notwithstanding subsection (1)(a), beginning July 1, 1987, through June 30, *1991*, the maximum weekly compensation benefit under that subsection may not exceed $149.50, which is one-half the state's weekly wage established July 1, 1986."

Section 10. Section 39-71-2504, MCA, is amended to read:

**"39-71-2504. (Temporary) Workers' compensation tax account.** *(1)* There is *a workers' compensation tax* account in the state special revenue fund.

*(2)* All collections of the tax, interest and penalties on the tax, *and revenue appropriated to the account under [section 2]* must be deposited in the account and are statutorily appropriated, as provided in 17-7-502, to the department to be used to reduce the unfunded liability in the state fund. **(Terminates June 30, 1991—sec. 10, Ch. 664, L. 1987.)"**

Section 11. **Appropriation.** There is appropriated $20 million from the general fund to the workers' compensation tax account in the state special revenue fund for fiscal year 1990 to be used to reduce the unfunded liability in the state compensation mutual insurance fund.

Section 12. **Exemption from notice requirement.** The 30-day notice requirement imposed under 39-71-2304(1) does not apply to rate changes effective July 1, 1989, made in response to the provisions of [this act].

Section 13. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. **Codification.** [Section 3] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 3].

Section 15. **Applicability.** [Sections 1 through 3] apply to taxable years beginning after December 31, 1989.

Section 16. **Effective date.** [This act] is effective on passage and approval.

Approved July 17, 1989.

# CHAPTER NO. 10

[HB 20]

"AN ACT REDUCING TO A SINGLE RATE THE PROPERTY TAX RATE ON CERTAIN PERSONAL PROPERTY; COMBINING PERSONAL PROPERTY CLASSES; PHASING IN A REDUCTION IN THE TAX RATE FOR CLASS EIGHT PROPERTY; CLASSIFYING

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AS CLASS SIX PROPERTY THE EQUIPMENT AND MACHINERY USED TO PROCESS CANOLA SEED OIL; PROVIDING AN APPROPRIATION TO SCHOOL DISTRICTS AND LOCAL GOVERNMENTS TO REIMBURSE MONEY LOST THROUGH PERSONAL PROPERTY TAX REDUCTIONS; AMENDING SECTIONS 15-1-101, 15-6-136 THROUGH 15-6-138, 15-10-402, 15-24-1102, 15-24-1103, AND 17-7-502, MCA; REPEALING SECTIONS 15-6-139, 15-6-140, AND 15-6-146, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 15-1-101, MCA, is amended to read:

**"15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to the raising of livestock, poultry, bees, and other species of domestic animals and wildlife in domestication or a captive environment, and the raising of field crops, fruit, and other animal and vegetable matter for food or fiber.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a nonprofit corporation as defined in 35-2-102 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; *and*

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative

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findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(p) The term "taxable value" means the percentage of market or assessed value as provided for in *Title 15, chapter 6, part 1.*

(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-6-136, MCA, is amended to read:

**"15-6-136. Class six property — description — taxable percentage.** (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for *rent or* lease in the ordinary course of business, provided each item of personal property satisfies all of the following:

(i) the full and true value of the personal property is less than $5,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(c) machinery and equipment used in a malting barley facility*; and*

*(d) machinery and equipment used in canola seed oil processing facilities if:*

*(i) the operators of such facilities employ a minimum of 15 full-time employees; and*

*(ii) a canola seed oil processing facility locates in the state of Montana after [the effective date of this act].*

(2) "Malting barley facility" means a facility the principal purpose of which is to malt malting barley. The term does not apply to a facility the principal purpose of which is to store, mix, blend, transport, transfer, or

otherwise do anything with malting barley, except malt malting barley. However, any machinery or equipment the principal purpose of which is to store, mix, blend, transport, transfer, or otherwise handle malting barley or other machinery or equipment that is used in or is otherwise an integral part of a facility that malts malting barley is machinery or equipment of a malting barley facility for the purposes of this section.

*(3) "Canola seed oil processing facility" means a facility that:*

*(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and*

*(b) employs at least 15 employees in a full-time capacity.*

*(4)* Class six property is taxed at 4% of its market value."

Section 3. **Contingency.** It is the intent of the legislature that [section 2] is void unless a new facility employing at least 15 employees in the processing of canola seed oil locates in the state of Montana after [the effective date of this act].

Section 4. Section 15-6-137, MCA, is amended to read:

**"15-6-137. Class seven property — description — taxable percentage.** (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

(3) Class seven property is taxed at 8% of its market value."

Section 5. Section 15-6-138, MCA, is amended to read:

**"15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

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(d) all trailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2);

(e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;

(f) buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102;

*(g) truck toppers weighing more than 300 pounds;*

*(h) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;*

*(i) x-ray and medical and dental equipment;*

*(j) citizens' band radios and mobile telephones;*

*(k) radio and television broadcasting and transmitting equipment;*

*(l) cable television systems;*

*(m) coal and ore haulers;*

*(n) theater projectors and sound equipment; and*

*(o) all other property not included in any other class in this part, except that property subject to a fee in lieu of a property tax.*

*(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.*

*(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.*

*(4)* Class eight property is taxed at *9%* of its market value."

Section 6. Section 15-10-402, MCA, is amended to read:

**"15-10-402. Property tax limited to 1986 levels.** (1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-142, and 15-6-144 may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier

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used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill."

Section 7. Section 15-24-1102, MCA, is amended to read:

**"15-24-1102. Federal property held under contract of sale.** When the property is held under a contract of sale or other agreement whereby upon payment the legal title is or may be acquired by the person, the real property shall be assessed and taxed as defined in *Title 15, chapter 6, part 1,* and 15-8-111 without deduction on account of the whole or any part of the purchase price or other sum due on the property remaining unpaid. The lien for the tax may not attach to, impair, or be enforced against any interest of the United States in the real property."

Section 8. Section 15-24-1103, MCA, is amended to read:

**"15-24-1103. Federal property held under lease.** When the property is held under lease, other interest, or estate therein less than the fee, except under contract of sale, the property shall be assessed and taxed as for the value, as defined in *Title 15, chapter 6, part 1,* of such leasehold, interest, or estate in the property and the lien for the tax shall attach to and be enforced against only the leasehold, interest, or estate in the property. When the United States authorizes the taxation of the property for the full assessed value of the fee thereof, the property shall be assessed for full assessed value as defined in 15-8-111."

Section 9. **Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation.** (1) (a) On or before May 1, 1990, the department of revenue shall remit to the county treasurer of each county 30% of the reimbursement amount specified in subsection (1)(b), as computed by the department. The department shall base the reimbursement on the reduction in personal property tax revenues due to the reduction in personal property tax rates for class eight property, as provided for in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145 and 15-6-147. The reimbursement basis must also include loss of personal property tax revenue due to the reclassification of new industrial property from class five to class eight with the reduced tax rate. The determination of the reimbursement basis must be made in the year in which the reclassification is made.

(b) The reimbursement revenue must be based on the county's taxable value and mill levies for tax year 1989.

(2) Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for taxable year 1989;

(b) the number of mills levied in the jurisdiction for taxable year 1990;

(c) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

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(d) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

(3) After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145 and 15-6-147. The department shall total the amounts for all taxing jurisdictions within the county.

(4) For taxable year 1990 and for each year thereafter, the department shall remit to the county treasurer the base amount of revenue reimbursable, determined pursuant to subsection (3), as follows:

(a) on or before November 30, 1990, and on or before each November 30 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county; and

(b) on or before May 31, 1991, and on or before each May 31 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county.

(5) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as current year mill levies on personal property taxes are distributed.

(6) For the purposes of this section, "taxing jurisdiction" means local governments and includes school districts, each municipality with tax increment financing, and the state of Montana.

(7) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse school districts and local governments for reductions in tax rates on personal property.

Section 10. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301;

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13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; section 13, House Bill No. 861, Laws of 1985; *and [section 9]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)**"

Section 11. **Repealer.** Sections 15-6-139, 15-6-140, and 15-6-146, MCA, are repealed.

Section 12. **Effective date.** [This act] is effective on passage and approval.

Section 13. **Applicability.** [This act] applies to tax years beginning after December 31, 1989.

Approved July 25, 1989.

# CHAPTER NO. 11

[HB 28]

AN ACT TO GENERALLY REVISE PUBLIC SCHOOL FUNDING AND RELATED TAXATION; TO ELIMINATE THE PRESENT PERMISSIVE LEVY; TO PROVIDE FOR A COUNTY WITH A BELOW-AVERAGE PROPERTY TAX MILL VALUE A GUARANTEED VALUE FOR MILLS LEVIED IN SUPPORT OF THE COUNTY RETIREMENT LEVY FOR DISTRICTS AND A DISTRICT'S OVERSCHEDULE PERMISSIVE AMOUNT; TO INCLUDE COMPREHENSIVE INSURANCE COSTS IN THE GENERAL FUND BUDGET OF SCHOOL DISTRICTS; TO ADJUST THE FOUNDATION PROGRAM SCHEDULES FOR SCHOOL FISCAL YEAR 1991 AND SUCCEEDING YEARS; TO LIMIT, WITH CERTAIN EXCEPTIONS, THE MAXIMUM GENERAL FUND BUDGET OF A DISTRICT TO 135 PERCENT OF THE FOUNDATION PROGRAM AMOUNT FOR THE DISTRICT; TO FURTHER LIMIT THE GENERAL FUND RESERVE OF CERTAIN DISTRICTS; TO REALLOCATE LOTTERY REVENUE FROM RETIREMENT

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EQUALIZATION TO STATE EQUALIZATION AID; TO IMPOSE A 40-MILL STATEWIDE LEVY IN SUPPORT OF STATE EQUALIZATION AID; TO INCREASE THE COUNTY ELEMENTARY LEVY FROM 28 MILLS TO 33 MILLS AND THE COUNTY HIGH SCHOOL LEVY FROM 17 MILLS TO 22 MILLS; TO IMPOSE A FLAT TAX RATE ON COAL GROSS PROCEEDS AND TO DISTRIBUTE THE PROCEEDS IN THE SAME MANNER AS PROPERTY TAXES ARE DISTRIBUTED; TO ABOLISH THE EDUCATION TRUST FUND ACCOUNT AND TO ALLOCATE THE BALANCE TO STATE EQUALIZATION AID; TO INSTITUTE A 5 PERCENT EDUCATION SURTAX ON INDIVIDUAL INCOME TAXES AND CORPORATE LICENSE OR INCOME TAXES IN LIEU OF A GENERAL SALES TAX; TO ALLOCATE 15 PERCENT OF THE INTEREST ON THE COAL SEVERANCE TAX PERMANENT FUND TO STATE EQUALIZATION AID; TO STATUTORILY APPROPRIATE ALL REVENUE ALLOCATED BY LAW TO COUNTY AND STATE EQUALIZATION; TO EXCLUDE ALL SCHOOL LEVIES FROM THE PROPERTY TAX LIMITATIONS OF INITIATIVE MEASURE NO. 105; TO LIMIT TO 180 THE NUMBER OF PUPIL-INSTRUCTION DAYS FOR WHICH FOUNDATION PROGRAM SUPPORT MAY BE RECEIVED; TO REQUIRE DISTRIBUTION OF STATE EQUALIZATION AID IN MONTHLY PAYMENTS; TO INCREASE THE GENERAL BONUS PAYMENTS FOR ENLARGED DISTRICTS; TO REQUIRE SCHOOL DISTRICTS TO USE GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; TO PROVIDE FOR A LEGISLATIVE OVERSIGHT COMMITTEE ON SCHOOL FUNDING IMPLEMENTATION TO DIRECT STUDIES ON FURTHER EQUALIZATION OF TRANSPORTATION, INSURANCE, AND CAPITAL EXPENDITURES AND TO PERFORM OTHER DUTIES; TO PROVIDE FOR A TELECOMMUNICATIONS NETWORK FOR EDUCATION; TO REQUIRE THE REVENUE OVERSIGHT COMMITTEE TO STUDY THE CONCEPT OF A GUARANTEED TAX BASE FOR FUNDING ELEMENTARY AND SECONDARY SCHOOLS; TO APPROPRIATE FUNDS FOR EQUALIZATION SUPPORT AND OTHER PURPOSES; TO ELIMINATE TAXATION OF NET PROCEEDS OF OIL AND GAS ON OTHER THAN INTERIM PRODUCTION AND NEW PRODUCTION; TO ESTABLISH A LOCAL GOVERNMENT SEVERANCE TAX IN LIEU OF A TAX ON NET PROCEEDS ON THE PRODUCTION OF OIL AND GAS OTHER THAN INTERIM PRODUCTION AND NEW PRODUCTION; TO PROVIDE FOR A 1-YEAR DELAY IN THE PAYMENT OF LOCAL GOVERNMENT SEVERANCE TAX; TO ALLOCATE THE PROCEEDS OF THE LOCAL GOVERNMENT SEVERANCE TAX ON OIL AND GAS IN THE SAME MANNER AS PROPERTY TAXES ARE DISTRIBUTED; AMENDING SECTIONS 2-7-504, 7-1-2111, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-1-501, 15-6-132, 15-10-402, 15-10-412, 15-23-602, 15-23-603, 15-23-605, 15-23-607, 15-23-703, 15-31-121, 15-35-108, 15-36-101, 15-36-102, 15-36-105, 15-36-112, 15-36-121, 17-3-213, 17-5-408, 17-5-704, 17-7-502, 20-3-106, 20-3-205, 20-3-324, 20-3-331, 20-5-305, 20-5-312, 20-6-401, 20-6-506, 20-6-603, 20-6-608, 20-7-414, 20-7-422, 20-7-431, 20-9-104, 20-9-141, 20-9-201, 20-9-212, 20-9-213, 20-9-301, 20-9-303, 20-9-311, 20-9-312, 20-9-315, 20-9-318 THROUGH 20-9-322, 20-9-331, 20-9-333,

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20-9-343, 20-9-344, 20-9-346, 20-9-347, 20-9-351 THROUGH 20-9-353, 20-9-501, 20-10-144, 23-5-1027, 90-1-108, 90-6-202, 90-6-212, 90-6-309, AND 90-6-402, MCA, AND SECTION 1, CHAPTER 634, LAWS OF 1989; REPEALING SECTIONS 15-23-604, 15-23-615, 15-23-616, 20-9-105, 20-9-352, 20-9-513, 20-9-531, 20-9-532, AND 90-6-211, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

WHEREAS, it is the intent of the Legislature to enhance equality of educational opportunity for students in the elementary schools and secondary schools of Montana by revising the school funding laws to provide greater equalization of the funding available to school districts and to promote equalization of school district expenditures per student. It is the further intent of the Legislature to preserve local control of the public school system, as guaranteed by Montana's Constitution.

For these purposes, the Legislature determines to equalize funding aid to the school districts through the foundation program for the school fiscal year ending June 30, 1991, in an amount equal to the following percentages of the total costs incurred by all the districts in the state in school fiscal year 1988: 90% of comprehensive insurance and 90% of general fund expenditures. The Legislature also determines to equalize funding for retirement costs by providing a guaranteed property tax mill value for those counties with a mill value per ANB less than the statewide mill value per ANB. The superintendent of public instruction is required to adopt rules to implement distribution of guaranteed tax base aid as provided in [sections 60 through 63]. It is intended that the rules adopted ensure the eligibility of the requesting school districts and the accountability of the districts for the guaranteed tax base aid payments they receive.

The Legislature recognizes its responsibility to devise an equalized system of school funding and recognizes that measures in addition to the provisions in this bill are necessary to fully address equalization of funding and expenditures for transportation, retirement, capital improvements, and other needs of the districts. Because it is necessary to identify those factors that affect disparate expenditure patterns, to determine whether those factors are educationally relevant, and to develop data not currently available to devise methods of equitably funding those needs, the Legislature determines that a study should be conducted, as provided in [sections 53 through 59], and that equitable funding methods for these needs should be addressed by the 52nd Legislature. It is not intended by the Legislature that the individual income tax surtax provide a long-term solution to the school equalization funding problems of Montana.

The Legislature acknowledges the constitutional guarantee of equal educational opportunity for each public school pupil in Montana. The Legislature also acknowledges the sound policy considerations for empowering local trustees to supervise and control the schools in the district, as required by the Montana Constitution. Therefore, to guarantee more equal expenditures per student in similarly sized schools throughout Montana, while also providing each district board of trustees the power to determine and meet the unique and individual needs of students and schools in the district, the Legislature determines that it is reasonable and necessary to

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establish a maximum general fund budget limitation for each district, except as provided in 20-9-315, of 135% of the district's foundation program amount. Because of different circumstances that exist from district to district, the Legislature finds that it is reasonable and necessary to permit that range of disparity in expenditures by similarly sized districts throughout the state.

The Legislature intends that the current system of funding county equalization with elementary and high school levies and other revenue sources be maintained without change in order to preserve the current method of providing equalized local support of schools. The statutory appropriation of all revenue earmarked to fund county equalization does not affect the manner in which that revenue is collected, controlled, and distributed to districts by the county. It is intended that a district eligible for federal funds under Title I of Public Law 81-874 will be able to maintain the local contribution rate as required by 20 U.S.C. 238(d)(3)(C) for continuing eligibility.

It is intended that while school districts may conduct more than 180 days of instruction, a school district may not receive foundation program support for more than 180 days of pupil instruction.

Under 20-3-106, 20-9-102, 20-9-201, 20-9-211, and 20-9-213, the Superintendent of Public Instruction is authorized to supervise school financial administration and to adopt rules establishing requirements for budgeting and financial administration of public school districts, including accounting and reporting requirements. Under 20-9-344, the Board of Public Education has authority to require any reports it considers necessary. It is intended that school districts be required to maintain accounting systems based on generally accepted accounting principles and that the Superintendent of Public Instruction adopt rules necessary to implement the requirement. The Superintendent of Public Instruction shall provide training and assistance to the districts as necessary to enable the districts to comply.

It is intended that the districts be required to file accurate and timely reports with the Superintendent of Public Instruction. Districts must be required to provide student and school district data as may be required by the Superintendent of Public Instruction concerning the condition of education in Montana, including personnel information, student and school district demographics, assessment of student and school district achievement, and other appropriate educational factors necessary to enable the Legislature to assess the equality of educational opportunity being provided by the public school districts and to determine the amount of state aid to be distributed to school districts. Districts shall also provide data to meet grant requirements and other national reporting needs.

It is intended that the Superintendent of Public Instruction conduct training and provide forms for the personnel responsible for completing reports. Whenever possible, the Superintendent of Public Instruction shall develop methods for collecting educational data electronically, using formats consistent with school district data processing capabilities. The educational data must be maintained in an electronic format easily accessible by other state agencies and the Legislature.

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State equalization aid and county equalization money may be withheld from school districts, as provided by 20-9-344, that do not comply with accounting and reporting requirements.

It is intended that the Superintendent of Public Instruction employ additional personnel during fiscal year 1990 and fiscal year 1991, not to exceed the appropriation, for the purpose of establishing standard accounting and reporting practices in the public school districts and for implementing the additional provisions of this bill.

The Legislature determines that if county equalization revenue is deficient because of noncollected tax payments, state equalization aid may be provided to offset the delinquency.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. Section 2-7-504, MCA, is amended to read:

**"2-7-504. Accounting methods.** *Unless otherwise required by law, the* department shall prescribe the general methods and details of accounting for the receipt and disbursement of all *money* belonging to governmental entities referred to in this part and shall establish in those offices general methods and details of accounting. All governmental entity officers shall conform with the standards prescribed by the department."

Section 2. Section 15-10-402, MCA, is amended to read:

**"15-10-402. Property tax limited to 1986 levels.** (1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, 15-6-136, 15-6-139, 15-6-142, and 15-6-144 may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; *elementary and high school districts, Title 20;* or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill."

Section 3. Section 15-10-412, MCA, is amended to read:

**"15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

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(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

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(h) revolving funds to support any categories specified in this subsection (8)*; and*

*(i) elementary and high school districts.*

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 4. Section 15-35-108, MCA, is amended to read:

**"15-35-108. Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund moneys shall be deposited in the fund established under 17-6-203(5) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

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(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17.5% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the *state special revenue fund for state equalization aid to public schools of the state.*

(b) *30%* to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 ¼% to the credit of the renewable resource development bond fund;

(e) 5% to a nonexpendable trust fund for the purpose of parks acquisition or management, protection of works of art in the state capitol, and other cultural and aesthetic projects. Income from this trust fund shall be appropriated as follows:

(i) ⅓ for protection of works of art in the state capitol and other cultural and aesthetic projects; and

(ii) ⅔ for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102;

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) ½ of 1% to the state special revenue fund for conservation districts;

(h) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 5. Section 17-3-213, MCA, is amended to read:

**"17-3-213. Allocation to general road fund and countywide school levies.** (1) The forest reserve funds so apportioned to each county *must* be apportioned by the county treasurer in each county as follows:

(a) to the general road fund, 66 ⅔% of the total amount received;

(b) to the following countywide school levies, 33 ⅓% of the total sum received:

(i) *county equalization* for elementary schools provided for in 20-9-331; *and*

(ii) *county equalization* for high schools provided for in 20-9-333;

(iii) the high school transportation fund provided for in 20-10-143; *and*

(iv) the elementary *and high school district retirement fund obligations* provided for in 20-9-501.

(2) The apportionment of money to the funds provided for under subsection (1)(b) *must* be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under this section is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (1)(b).

(3) In counties *in which* special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66⅔% of the total amount received for the general road fund to *the* special road districts within the county based upon the percentage that the total area of *the* road district bears to the total area of the entire county."

Section 6. Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; *[section 51];* 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to

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the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. **(In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"**

Section 7. Section 20-3-106, MCA, is amended to read:

**"20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 20-9-163 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

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(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program *and guaranteed tax base aid,* in accordance with the provisions of *20-9-331, 20-9-333,* 20-9-342, 20-9-346, 20-9-347, *and [sections 60 through 63]*;

(15) distribute state impact aid in accordance with the provisions of 20-9-304;

(16) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(17) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(18) request, accept, deposit, and expend federal *money* in accordance with the provisions of 20-9-603;

(19) authorize the use of federal *money* for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(20) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(21) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(22) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with *the* standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(23) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(24) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(25) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(26) as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(27) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(28) administer the traffic education program in accordance with the provisions of 20-7-502;

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(29) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(30) review school building plans and specifications in accordance with the provisions of 20-6-622;

(31) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(32) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of *the* student assessment for the board of public education and the legislature;

(33) administer the distribution of *guaranteed tax base aid for county retirement levy obligations in accordance with [sections 60 through 63]*; and

(34) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education. **(Subsection (33) effective July 1, 1988—sec. 8, Ch. 635, L. 1987.)"**

Section 8. Section 20-3-205, MCA, is amended to read:

**"20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

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(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) *monthly*, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report *the* computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

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(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender *all* records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts *must* be discussed."

Section 9. Section 20-3-324, MCA, is amended to read:

**"20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

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(8) adopt and administer the annual budget or an emergency budget of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, additional levy, cash reserve, and state impact aid amount for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to his child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

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(22) procure and display outside daily in suitable weather at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110; and

(24) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 10. Section 20-3-331, MCA, is amended to read:

**"20-3-331. Purchase of liability insurance.** The trustees of any district may purchase insurance coverage for the district, trustees, and employees against liability for the death, injury, or disability of any person or damage to property. *The trustees shall include the cost of coverage in the general fund budget of the district.*"

Section 11. Section 20-5-305, MCA, is amended to read:

**"20-5-305. Elementary tuition rates.** (1) Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which he resides, under the provisions of 20-5-301 or 20-5-302, *the* district *of residence* shall pay tuition to the elementary district where the pupil attends school. Except as provided in subsection (2), the basis of the rate of tuition shall be determined by the attended district. The rate of tuition *must* be determined by:

(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) by the ANB of the district for the current fiscal year, as determined under the provisions of 20-9-311; and

(c) subtracting *from the amount determined in subsection (1)(b)* the per-ANB amount allowed by the foundation program *schedules and the per-ANB amount of guaranteed tax base aid as provided in [sections 60 through 63].*

(2) The tuition for a full-time elementary special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of elementary tuition for full-time elementary special education pupils as designated in 20-9-311 for funding purposes."

Section 12. Section 20-5-312, MCA, is amended to read:

**"20-5-312. Reporting, budgeting, and payment for high school tuition.** (1) Except as provided in subsection (2), at the close of the school term of each school fiscal year, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

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(a) totaling the actual expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the ANB of the district as determined under the provisions of 20-9-311; and

(c) subtracting *from the amount determined in subsection (1)(b)* the per-ANB amount allowed by the foundation program *schedules and the per-ANB amount of guaranteed tax base aid as provided in [sections 60 through 63]*.

(2) The tuition for a full-time high school special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for full-time high school special education pupils as designated in 20-9-311 for funding purposes.

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(4) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(5) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due *the* out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(6) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence must be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of at least one-half of the high school tuition obligations established under this section out of the first money realized from the county basic special tax for high schools. The remaining obligations must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer of the county where each high school entitled to tuition is located. The county treasurer shall credit tuition receipts to the general fund of the applicable high school district, and the tuition receipts must be used in accordance with the provisions of 20-9-141.

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(7) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district must be made by the county commissioners in accordance with 20-9-142. The levy requirement must be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments must be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school district feel the transfer privilege provided by this subsection is being abused, they may appeal to the county superintendent of schools, who shall hold a hearing and either approve or disapprove the transfer."

Section 13. Section 20-6-401, MCA, is amended to read:

**"20-6-401. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Component districts" means the elementary or high school districts incorporated into the enlarged district.

(2) "Eligible pupils" means the average number belonging (ANB) in the operating schools of the component districts and the tuition pupils residing in the component districts and attending another district's school under the tuition provisions of the school laws, except that the pupils residing in the component district having the largest total number of pupils are ineligible for bonus payment consideration.

(3) "Enlarged district" means the elementary or high school district resulting from the consolidation or annexation of two or more component districts.

(4) "General bonus payment" for first- and second-class school districts must be *$450* per eligible pupil per year for a period of 3 years and must be deposited in the enlarged district's general fund. General bonus payment for third-class school districts must be *$750* per eligible pupil per year for a period of 3 years and must be deposited in the enlarged district's general fund. The *general bonus* payment must be made from the state school equalization aid account.

(5) "Transportation bonus payment" is the provision of 66 ⅔% state financing of the on-schedule transportation amount as provided by the transportation provisions of the school laws. When an eligible pupil is entitled to transportation, the enlarged district is entitled to the transportation

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bonus payment for the eligible pupil for a period of 3 years. The payment must be made from the state transportation aid account. When the eligible pupil rides a bus providing transportation for ineligible pupils, the 66 ⅔% state financing of the on-schedule amount for this payment must be prorated to provide financing for the eligible pupil."

Section 14. Section 20-6-506, MCA, is amended to read:

**"20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating a county high school.** (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 20-6-505, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years *must* be applied under 20-9-320 to prorate the *foundation program schedule amount provided in 20-9-303(2)(a)* between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school *must* be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school."

Section 15. Section 20-6-603, MCA, is amended to read:

**"20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required.** (1) The trustees of any district *may* purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. *Action may* not be taken by the trustees without the approval of the qualified electors of the district at an election called for *the purpose of* approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the *foundation program schedule amount provided in 20-9-303(2)(a),* and in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(d) *money is* otherwise available under the provisions of this title and the ballot for the site approval for *the* building incorporated a description of the building to be located on the site.

(2) When an election is conducted under the provisions of this section, it *must* be called under the provisions of 20-20-201 and *must* be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 *may* vote in *the* election. If

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a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action."

Section 16. Section 20-6-608, MCA, is amended to read:

**"20-6-608. Authority and duty of trustees to insure district property.** The trustees of any district shall insure any or all real and personal property of the district. *The trustees shall include the cost of insurance in the general fund budget of the district.*"

Section 17. Section 20-7-414, MCA, is amended to read:

**"20-7-414. Determination of children in need and type of special education needed — approval of classes and programs by superintendent.** (1) The determination of the children requiring special education and the type of special education needed by these children *is* the responsibility of the trustees, and *the* determination *must* be made in compliance with the procedures established in the rules of the superintendent of public instruction. Whenever the trustees of a school district or the governing authority of an institution learn of a handicapped child in their jurisdiction who is in need of special education, they shall determine whether the child is in need of a surrogate parent by determining whether the parents or guardian is unknown or unavailable or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution must nominate a surrogate parent for the child as provided in 20-7-461.

(2) Whenever the trustees of any district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. No special education class may be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the *foundation program* for special education."

Section 18. Section 20-7-422, MCA, is amended to read:

**"20-7-422. Out-of-state tuition for special education children.** (1) If the trustees of any district recommend to the superintendent of public instruction the attendance of a child in need of special education in a special education program offered outside of the state of Montana, *the* arrangements *are* not subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

(2) Whenever the attendance of a child at an out-of-state special education program is approved by the superintendent of public instruction, the

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superintendent of public instruction *shall*, in cooperation with the department of family services, negotiate the program for the child and the amount and manner of payment of tuition. The amount of tuition *must* be included as a contracted service in 20-7-431(1)(a)(iii)(A) in the *foundation program amount* for special education."

Section 19. Section 20-7-431, MCA, is amended to read:

**"20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1) For the purpose of determining the *foundation program amount* for special education as defined in 20-9-321, the following schedule of allowable costs *must* be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget (for the purposes of determining the amount of the *foundation program* for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313):

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses including:

(i) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program;

(ii) teaching supplies and textbooks if used exclusively for special programs—the actual total cost;

(iii) other expenses:

(A) contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies—the actual total cost;

(B) transportation costs for special education personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes;

(b) supportive services, including:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full time in the special program; if *the* personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program. Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) salaries and benefits of clerical personnel *who assist* professional personnel in supportive services—the entire cost if employed full time in the

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special program; if *the* personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program;

(c) equipment:

(i) equipment—the actual total cost;

(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;

(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;

(iv) repair and maintenance of equipment—the actual total cost;

(d) room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall *adopt* rules in accordance with the policies of the board of public education for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that *must* be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section.

(3) An annual accounting of all expenditures of school district general fund *money* for special education *must* be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for *the* accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the *foundation program* for special education.

(5) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

(6) (a) Notwithstanding other provisions of the law, the superintendent of public instruction *may* not approve a *foundation program amount* for special education *that* exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

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(b) If the total allowable cost of the special education budgets exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations based upon prioritized budget items as established by the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the *foundation program* for special education and is the responsibility of the school district."

Section 20. Section 20-9-104, MCA, is amended to read:

**"20-9-104. General fund cash reserve.** *(1)* At the end of each school fiscal year, the trustees of each district shall designate *the* portion of the general fund end-of-the-year cash balance *that is to* be earmarked as cash reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. *Except as provided in subsections (3) and (4), the* amount of the general fund cash balance that is earmarked as cash reserve *may* not exceed *the following percentages* of the final general fund budget for the ensuing school fiscal year*:*

*(a) 35% for a district that did not receive state equalization aid during the current school fiscal year;*

*(b) 30% for a district that received state equalization aid equal to 25% or less of its foundation program schedule entitlement in the current school fiscal year; and*

*(c) 20% for a district that received state equalization aid equal to more than 25% of its foundation program schedule entitlement in the current school fiscal year.*

*(2) The amount held as cash reserve may* not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts. Any portion of the general fund end-of-the-year cash balance that is not earmarked for cash reserve purposes *is* cash reappropriated *and must* be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

*(3) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than:*

*(a) any amount received during the current school fiscal year under Public Law 81-874;*

*(b) the unused balance of any amount received in settlement of tax payments protested prior to [the effective date of this section]; or*

*(c) any amount received as a general bonus payment under 20-6-401.*

*(4) The limitation of subsection (1) does not apply when the amount earmarked as cash reserve is $10,000 or less."*

Section 21. Section 20-9-141, MCA, is amended to read:

**"20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

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(a) Determine the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303; and

*(ii)* any *additional* general fund budget amount adopted by the trustees of the district under the provisions of 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the *money* available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal *money* received under the provisions of Title I of Public Law 81-874 or other anticipated federal *money* received in lieu of *that* federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated or reappropriated revenue from property taxes *and fees* imposed under *23-2-517, 23-2-803,* 61-3-504(2), *61-3-521,* 61-3-537, *and 67-3-204*;

(vi) anticipated net proceeds taxes for interim production and new production, as defined in 15-23-601;

(vii) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

*(viii) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and*

*(ix)* any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the *money* available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) *must* be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy *must* be made by the county commissioners in accordance with 20-9-142."

Section 22. Section 20-9-201, MCA, is amended to read:

**"20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate

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detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from *the* fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, and any other funds so designated by the legislature *are* budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in *the* fund. The school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, and any other funds so designated by the legislature *are* nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district except the extracurricular money realized from pupil activities. *Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles.* The superintendent of public instruction has general supervisory authority *as prescribed by law* over the school financial administration provisions, as they relate to elementary and high school districts. *He* shall *adopt* rules necessary to secure compliance with the law."

Section 23. Section 20-9-212, MCA, is amended to read:

**"20-9-212. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of *the* money according to the apportionments ordered by the county superintendent. A separate accounting *must* be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the county's high school transportation obligation;

(d) the county tax in support of the *elementary and high school district retirement obligations; and*

*(e)* any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money

on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion *the* county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all *revenue* received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of *the revenue*, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(9) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of *the* warrant. Redemption of registered warrants *must* be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(10) invest the money of any district as directed by the trustees of the district within 3 working days of *the* direction;

(11) each month *give* to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance;

(12) remit promptly to the state treasurer receipts for the county tax for a vocational-technical center when levied by the board of county commissioners *under the provisions of 20-16-202; and*

*(13) invest the money received from the basic county tax in support of the elementary foundation programs and the basic special tax in support of the high school foundation programs within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to*

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*account for the taxes received for the purposes specified in subsections (1)(a) and (1)(b).*"

Section 24. Section 20-9-213, MCA, is amended to read:

"**20-9-213. Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of *the* district. No person other than the trustees acting as a governing board *may* expend *money* of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school *money* for each fund maintained by the district in accordance with *generally accepted accounting principles and the* rules prescribed by the superintendent of public instruction. The record of *the* accounting *must* be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district *money* and cause warrants to be issued for the payment of lawful obligations;

(3) issue warrants on any budgeted fund in anticipation of budgeted revenues, except that *the* expenditures *may* not exceed the amount budgeted for *the* fund;

(4) invest any *money* of the district, whenever in the judgment of the trustees *the* investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC, FSLIC, or NCUA located in the state; or in a repurchase agreement as authorized in 7-6-213. All interest collected on *the* deposits or investments *must* be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds *must* be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer *is* not subject to ratable distribution laws and *must* be done in accordance with the directive from the board of trustees. A district may invest *money* under the state unified investment program established in Title 17, chapter 6.

*(5) cause the district to record every transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;*

*(6)* report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts *must* be submitted to the county superintendent of each county in which part of the joint district is situated.

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*(7)* whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

*(8)* cause the accounting records of the district to be audited *biennially* as required by *2-7-503*; and

*(9)* perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

Section 25. Section 20-9-301, MCA, is amended to read:

**"20-9-301. Purpose of foundation program and definition of general fund budget.** (1) A uniform system of free public schools sufficient for the education of and open to all school age children of the state *must* be established and maintained throughout the state of Montana. The state shall aid in the support of its several school districts on the basis of their financial need as measured by the foundation program and in the manner established in this title.

(2) The principal budgetary vehicle for achieving the minimum financing as established by the foundation program *is* the general fund *budget* of the district. The purpose of the general fund *budget is* to finance those general maintenance and operational costs of a district not financed by other funds established for special purposes in this title.

(3) The amount of the general fund budget for each school fiscal year *may* not exceed the financing limitations established by this title but *may not be* less than the amount established by law as the foundation program. The general fund budget *must* be financed by the foundation program revenues and may be supplemented *by an additional voted levy and other revenue, as* provided by *20-9-353*."

Section 26. Section 20-9-303, MCA, is amended to read:

**"20-9-303. Definition of foundation program — nonisolated school foundation program financing — special education funds.** (1) As used in this title, the term "foundation program" *means* the minimum expenditures that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and *may* not include expenditures from any other fund. It *is* financed by:

(a) county equalization *money, as provided in 20-9-331 and 20-9-333*;

(b) state equalization aid, *as provided in 20-9-343;*

*(c) appropriations for special education; and*

*(d) a district levy as provided in subsection (3) for support of a school not approved as an isolated school under the provisions of 20-9-302.*

(2) The foundation program *includes:*

*(a) amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320; and*

*(b) payments in support of special education programs under 20-9-321.*

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*(3) An* elementary school having an ANB of nine or fewer pupils for 2 consecutive years which is not approved as an isolated school under the provisions of 20-9-302 *may budget and spend* the schedule amount, but the county and state shall participate in financing one-half of the foundation program, and the district shall finance the remaining one-half by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the foundation program.

*(4)* Funds provided to support the special education accounting budget may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education *must* be accounted for separately from the balance of the school district general fund. Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title. The unexpended balance of the special education accounting budget *carries* over to the next year to reduce the amount of funding required to finance the district's ensuing year's *foundation program amount* for special education."

Section 27. Section 20-9-311, MCA, is amended to read:

**"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging must be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, the total must be calculated in accordance with the provisions of 20-9-805. *For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days.* Attendance for a part of a morning session or a part of an afternoon session by a pupil must be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session will be counted as one-half day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB will be computed in a manner prescribed by the superintendent of public instruction, but in no case may the ANB exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, his absence after the 10th day of absence may not be included in the aggregate days of absence and his enrollment in the school may not be considered in the calculation of the average number belonging until he resumes attendance at school.

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(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he is considered a full-time special pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he is considered regularly enrolled for ANB purposes.

(3) The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town or from another school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated individually for ANB purposes;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for the district.

(4) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction."

Section 28. Section 20-9-312, MCA, is amended to read:

**"20-9-312. Foundation program schedule for grades seven and eight.** The ANB calculated for grades 7 and 8 *must* be funded at the high school rate, provided that the school meets the standards for accreditation of a middle school. When *the* pupils are actually enrolled in an elementary school, the *foundation program schedule* amount per ANB is determined from the high school schedule using the total ANB of the elementary school. To determine the total ANB of *the* elementary school, the 7th and 8th grade pupils *must* be included in *the* total."

Section 29. Section 20-9-315, MCA, is amended to read:

**"20-9-315. Maximum general fund budget and exceptions.** *(1)* The total amount of the general fund budget of any district *may* not be greater than the *district's foundation program as provided in 20-9-303*, except when a district has adopted an emergency general fund budget under

the provisions of 20-9-165 or when a district satisfies the requirements of 20-9-353.

*(2) Notwithstanding the provisions of subsection (1), for school fiscal year 1991 and succeeding years, a district's maximum general fund budget may not exceed the greater of:*

*(a) [the equivalent of the percent to be determined that is 112% of FY 1988 district general fund and insurance fund expenditures] of the foundation program amount provided for in 20-9-303; or*

*(b) 104% of the district's general fund budget amount for the previous school fiscal year.*

*(3) Subsection (2) does not apply when Public Law 81-874 funds are the source of funding for the excess amount, until the state receives approval of an application to equalize the funds under 20 U.S.C. 240(d).*"

Section 30. Section 20-9-318, MCA, is amended to read:

"**20-9-318. Elementary school foundation program schedule for school fiscal year 1991 and succeeding years.** For *the school fiscal year ending June 30, 1991,* and succeeding school years, the elementary school *foundation program* schedule is as follows:

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum *is $23,646* if *the* school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum *is $23,646* plus *$988* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of at least 14 pupils but less than 18 pupils that qualify for instructional aide funding under 20-9-322, the maximum *is $38,759* plus *$988* per pupil on the basis of the average number belonging over 14.

(4) For schools with an ANB of 18 pupils and employing one teacher, the maximum *is $32,541* plus *$988* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(5) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum *is $51,953* plus *$619* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(6) For schools having an ANB in excess of 40, the maximum, on the basis of the total pupils (ANB) in the district, *is* as follows:

(a) For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$2,296 is* decreased at the rate of *$2.23* for each additional pupil until the total number (ANB) *reaches* a total of 100 pupils.

(b) For a school having an ANB of more than 100 pupils, the maximum of *$2,162 is* decreased at the rate of *$1.22* for each additional pupil until the ANB *reaches* 300 pupils.

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(c) For a school having an ANB of more than 300 pupils, the maximum *may* not exceed *$1,913* for each pupil.

(7) The maximum per pupil for all pupils (ANB) and for all elementary schools *must* be computed on the basis of the amount allowed *in this section* on account of the last eligible pupil (ANB). All elementary schools operated within the incorporated limits of a city or town *must* be treated as one school for the purpose of this schedule."

Section 31. Section 20-9-319, MCA, is amended to read:

**"20-9-319. High school foundation program schedule for school fiscal year 1991 and succeeding years.** For *the school fiscal year ending June 30, 1991,* and succeeding school years, the high school *foundation program* schedule is as follows:

(1) For each high school having an ANB of 24 or fewer pupils, the maximum *is $143,793.*

(2) For a *high* school having an ANB of more than 24 pupils, the maximum *of $5,991 is* decreased at the rate of *$32.68* for each additional pupil until the ANB *reaches* a total of 40 pupils.

(3) For a school having an ANB of more than 40 pupils, the maximum of *$5,469 is* decreased at the rate of *$32.68* for each additional pupil until the ANB *reaches* 100 pupils.

(4) For a school having an ANB of more than 100 pupils, *the* maximum of *$3,508 is* decreased at the rate of *$5.47* for each additional pupil until the ANB *reaches* 200 pupils.

(5) For a school having an ANB of more than 200 pupils, the maximum of *$2,961 is* decreased by *$3.00* for each additional pupil until the ANB *reaches* 300 pupils.

(6) For a school having an ANB of more than 300 pupils, the maximum of *$2,660 is* decreased at the rate of *55* cents *for each additional pupil* until the ANB *reaches* 600 pupils.

(7) For a school having an ANB *of more than* 600 pupils, the maximum *may* not exceed *$2,495* per pupil.

(8) The maximum per pupil for all pupils (ANB) and for all high schools *must* be computed on the basis of the amount allowed *in this section* on account of the last eligible pupil (ANB). All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town, *must* be treated as one school for the purpose of this schedule."

Section 32. Section 20-9-320, MCA, is amended to read:

**"20-9-320. Foundation program schedule amount for junior high school.** (1) The *foundation program schedule* amount for an approved and accredited junior high school *must* be prorated between the elementary district *foundation program schedule amount* and the high school district *foundation program schedule amount* in the following manner:

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(a) determine the per-ANB schedule amount for the school, as defined by 20-9-317 and 20-9-319, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the 7th and 8th grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (1)(a) by the ANB calculated in subsection (1)(b) to determine the authorized amount available for the elementary district *foundation program*; and

(d) subtract the amount determined in subsection (1)(c) from the total authorized amount for the school to determine the authorized amount available for the high school district *foundation program.*

(2) The amount determined for each school of a district under the schedules provided in 20-9-316 through 20-9-319 *must* be totaled to determine the *foundation program schedule amount* for *the* district."

Section 33. Section 20-9-321, MCA, is amended to read:

**"20-9-321. Foundation program and contingency funds for special education.** (1) For the purpose of establishing the *foundation program* amount for a current year special education program for a school district, the superintendent of public instruction *shall* determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget *must* be prepared on forms provided by the superintendent of public instruction and *must* set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of 20-9-315 through 20-9-321.

(2) The total amount of allowable costs approved by the superintendent of public instruction *is* the special education *foundation program* amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget *may* not, under any condition, be less than the *foundation program* amount for one regular ANB for each full-time *special* pupil in the school district.

(3) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district *foundation program* for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the emergency budget provisions of 20-9-161(5), allowable costs

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for the given year may be added to the *foundation program* amount for special education for the subsequent school year. *The allowable* costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.

(4) The sum of the previous year special education expenses as defined in subsection (3) and the *foundation program amount* for current year special education as defined in subsections (1) and (2) *is* the special education budget for accounting purposes.

(5) The *foundation program amount* for special education *must* be added to the *foundation program amount* of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total *foundation program amount* for the district."

Section 34. Section 20-9-322, MCA, is amended to read:

**"20-9-322. Elementary instructional aide funding qualification.** (1) An elementary school that anticipates an ANB of at least 14 but less than 18 pupils for the ensuing school fiscal year may determine the *foundation program* amount under the provisions of 20-9-316(3) or 20-9-318(3) if eligibility is approved in accordance with the following provisions:

(a) No later than May 10 of each year, the school district shall submit its application for approval for instructional aide funding to the superintendent of public instruction. The application must include:

(i) the ANB for the preceding ANB calculation period;

(ii) the current ANB and the number of grade levels being taught on May 1 of the current year;

(iii) an estimate of the ANB and the number of grade levels anticipated for the ensuing ANB calculation period;

(iv) the factual information on which the estimate is based; and

(v) any other information or data that may be required by the superintendent of public instruction.

(b) The superintendent of public instruction shall immediately review all of the factors of the application and shall approve the application if the anticipated ANB is at least 14 but less than 18 pupils and a minimum of five grade levels are being taught as of May 1 of the current year or documentation is provided that indicates that the anticipated ANB will require a minimum of five grade levels to be taught in the ensuing school year.

(2) Whenever a school district applies for and is approved for instructional aide funding under the provisions of subsection (1), the district shall hire an instructional aide.

(3) For the purposes of this section, the term "instructional aide" means:

(a) a person who is under the direct supervision of a teacher; or

(b) a certified teacher."

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Section 35. Section 20-9-331, MCA, is amended to read:

**"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program.** (1) *The* county commissioners of each county *shall* levy an annual basic tax of *33* mills on the *dollar* of the taxable value of all taxable property within the county, except for *property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204,* for the purposes of local and state foundation program support. The revenue collected from this levy *must* be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated *revenue* identified in subsection (2) *must* be subtracted from the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined *in subsection (1)(a),* the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

*(c) If revenue from the basic levy prescribed by this section when combined with the other revenue from subsection (2) is insufficient to fully fund the percentage determined in 20-9-347(1)(b) and the county is eligible for an apportionment of state equalization aid under the provisions of 20-9-347(1)(c), the county superintendent shall notify the superintendent of public instruction of the deficiency. The superintendent of public instruction shall increase the state equalization aid payments to the districts in the affected county to offset the deficiency. A payment may not be made under this subsection (c) that allows a district to receive foundation program funding in excess of the foundation program amount of the district.*

(2) The *revenue* realized from the county's portion of the levy prescribed by this section and the *revenue* from the following sources *must* be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting *must* be kept of *the revenue* by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

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(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's *accounts* for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, *including federal forest reserve funds allocated under the provisions of 17-3-213*;

(f) net proceeds taxes for interim production and new production, as defined in 15-23-601; and

(g) anticipated revenue from property taxes *and fees* imposed under *23-2-517, 23-2-803,* 61-3-504(2), *61-3-521,* 61-3-537, *and 67-3-204.*"

Section 36. Section 20-9-333, MCA, is amended to read:

"**20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program.** (1) *The* county commissioners of each county *shall* levy an annual basic special tax for high schools of *22* mills on the dollar of the taxable value of all taxable property within the county, except for *property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204,* for the purposes of local and state foundation program support. The revenue collected from this levy *must* be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the *sum of the* estimated *revenue* identified in *subsection (2) must* be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined *in subsection (1)(a),* the county treasurer shall remit the surplus to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

*(c) If revenue from the basic levy prescribed by this section when combined with the other revenue from subsection (2) is insufficient to fully fund the percentage determined in 20-9-347(1)(b) and the county is eligible for an apportionment of state equalization aid under the provisions of 20-9-347(1)(c), the county superintendent shall notify the superintendent of public instruction of the deficiency. The superintendent of public instruction shall increase the state equalization aid payments to the districts in the affected county to offset the deficiency. A payment may not be made under this subsection (c) that allows a district to receive foundation program funding in excess of the foundation program amount of the district.*

(2) The *revenue* realized from the county's portion of the levy prescribed in this section and the *revenue* from the following sources *must* be

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used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting *must* be kept of *the revenue* by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state *money* distributed to the county as payment in lieu of property taxation, *including federal forest reserve funds allocated under the provisions of 17-3-213*;

(c) net proceeds taxes for interim production and new production, as defined in 15-23-601; and

(d) anticipated revenue from property taxes *and fees* imposed under *23-2-517, 23-2-803,* 61-3-504(2), *61-3-521,* 61-3-537, *and 67-3-204.*"

Section 37. Section 20-9-343, MCA, is amended to read:

**"20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means *the money* deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the *purposes* of *payment of guaranteed tax base aid and* equalization of the foundation program.

(2) The superintendent of public instruction *may* spend *funds appropriated for state equalization aid* as required for *guaranteed tax base aid and* foundation program purposes throughout the biennium.

(3) The following *must* be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, *as provided by 15-1-501*;

(b) except as provided in 15-31-702, *money* received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

*(f) money received from the state equalization aid levy under [section 50];*

*(g) income from the lottery, as provided in 23-5-1027;*

*(h)* the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

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*(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and*

*(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704(2).*

*(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.*

*(5)* Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce *any* appropriation required for the next succeeding biennium."

Section 38. Section 20-9-344, MCA, is amended to read:

**"20-9-344. Purpose of state equalization aid and duties of the board of public education for distribution — conditions of first payment.** (1) The money available for state equalization aid *must* be distributed and apportioned to provide an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings *and* grounds, and transportation.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law and in a manner that *provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid*;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it *considers* necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to *the* aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education *may* not increase or decrease the state equalization aid distribution to any district on account of any difference *that* may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

*(3) The board of public education may order the superintendent of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from a district when the district fails to:*

*(a) submit reports or budgets as required by law or rules adopted by the board of public education; or*

*(b) maintain accredited status.*

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*(4) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.*

*(5) If* a district *or county receives* more state equalization aid than it is entitled to, the county treasurer *shall* return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the department of commerce.

*(6) (a)* The first *foundation program* payment *and guaranteed tax base aid payment* must be based on an estimate of 20% of *the* entitlement *of each district or county* and distributed by July 15 of the school fiscal year.

*(b) Each subsequent monthly payment must be at least 7% of the entitlement of each district or county."*

Section 39. Section 20-9-346, MCA, is amended to read:

**"20-9-346. Duties of the superintendent of public instruction for state equalization aid distribution.** The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1) establishing *the* annual entitlement *of each district and county* to state equalization aid, based on the data reported in the *retirement and general fund budgets* for each district that *have* been duly adopted for the current school fiscal year and verified by the superintendent of public instruction and by applying *the* verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347;

(2) recommending to the board of public education the entitlement of all districts *and counties* to state equalization aid to enable the board of public education to order the distribution of state equalization aid;

(3) distributing by state warrant *or electronic transfer* the state equalization aid, for each district *or county* entitled to *the* aid, to the county treasurer of the *respective county or* county where the district is located, in accordance with the distribution ordered by the board of public education;

(4) keeping a record in his office of the full and complete data concerning *money* available for state equalization aid and the entitlements for state equalization aid of the districts of the state;

(5) reporting to the board of public education the estimated amount *that* will be available for state equalization aid; and

(6) reporting to both *houses* of the state legislature in any year when a session is convened:

(a) the figures and data available in his office concerning distributions of state equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of *the* available *money* but not yet distributed; and

(d) the latest estimate of accruals of *money* available for state equalization aid."

Section 40. Section 20-9-347, MCA, is amended to read:

**"20-9-347. Formula for state equalization aid apportionment in support of foundation program.** (1) The superintendent of public instruction shall apportion the state equalization aid *available for support of the foundation program*, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:

(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state *money* available for state equalization aid *in support of the foundation program*) is of the total amount of the foundation programs of all counties.

(b) Determine the percentage that the total funds available in each county in support of the foundation programs in *the* county (excluding state *money* available for state equalization aid *in support of the foundation program*) is of the total amount of the foundation programs of all districts of *the* county.

(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) *are not* entitled to an apportionment of the state equalization aid *in support of the foundation program.*

(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total *money* available to all remaining counties in support of the foundation program (including the state *money* available for state equalization aid *in support of the foundation program*) is of the total amount of the foundation programs of all remaining counties.

(e) Each district of each remaining county *is* entitled to an apportionment of the state equalization aid *in support of the foundation program equal to* the difference between the percentage determined in subsection (1)(d) and the percentage determined for *the* county in subsection (1)(b) multiplied by the foundation program amount for *the* district.

(2) The superintendent of public instruction shall supply the county treasurer and the county superintendent with a report of the apportionments of state equalization aid *in support of the foundation program of each district* of the county, and the state equalization aid *in support of the foundation program must* be apportioned to *the* districts in accordance with *the* report."

Section 41. Section 20-9-351, MCA, is amended to read:

**"20-9-351. Funding of deficiency in state equalization aid.** If the *money available for state equalization aid is not sufficient to provide the foundation program schedule support determined in 20-9-348 and the*

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*guaranteed tax base aid required under [sections 60 through 63]*, the superintendent of public instruction *shall* request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that *is* sufficient to complete the funding of *guaranteed tax base aid and* the foundation programs of the elementary or secondary schools, or both, for the current biennium."

Section 42. Section 20-9-353, MCA, is amended to read:

**"20-9-353. Additional levy for general fund — election for authorization to impose.** (1) *Except as limited by 20-9-315(2), the* trustees of any district may propose to adopt a general fund budget in excess of the *foundation program* for *the* district for any of the following purposes:

(a) building, altering, repairing, or enlarging any schoolhouse of the district;

(b) furnishing additional school facilities for the district;

(c) acquisition of land for the district;

(d) proper maintenance and operation of the school programs of the district; *or*

*(e) severance pay for district employees.*

(2) When the trustees of any district determine that an additional amount of financing is required for the general fund budget that is in excess of the statutory schedule amount, the trustees shall submit the proposition of an additional levy to raise *the* excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon *the* proposition, except that *an* election *is not* required to permit the school trustees to use any funds available to finance the additional amount other than those funds to be raised by the additional levy. *The* special election *must* be called and conducted in the manner prescribed by this title for school elections. The ballot for *the* election *must* state only the amount of money to be raised by additional property taxation, the approximate number of mills required to raise *the* money, and the purpose for which *the* money will be expended. *The ballot must* be in the following format:

PROPOSITION

Shall a levy be made in addition to the levies authorized by law in *the* number of mills as may be necessary to raise the sum of (state the amount to be raised by additional tax levy), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional tax levy is made)?

☐ FOR the levy.

☐ AGAINST the levy.

(3) If the election on any additional levy for the general fund is approved by a majority vote of *the* electors voting at *the* election, the proposition *carries* and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall

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certify the additional levy amount authorized by *the* special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy *the authorized* number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, to raise the amount of *the* additional levy.

(4) Authorization to levy an additional tax under the provisions of this section *is* effective for only 1 school fiscal year and *must* be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective."

Section 43. Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement fund.** (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system *must* be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system *must* be calculated in accordance with 19-3-801. The district's contributions for each employee covered by any federal social security system *must* be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance *must* be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any system *referred to in subsection (1)* shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the *money* available to reduce the retirement fund levy requirement by adding:

(i) any anticipated *money* that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes *and fees* imposed under *23-2-517, 23-2-803,* 61-3-504(2), *61-3-521,* 61-3-537, *and 67-3-204*;

*(ii) anticipated guaranteed tax base aid in support of retirement;*

*(iii)* net proceeds taxes; and

*(iv)* any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve *may* not be more than 35% of the final retirement

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fund budget for the ensuing school fiscal year and *must* be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the *money* available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; *and*

*(b)* report each levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set *the* county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district *must* be prorated to each county in which a part of *the* district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements *must* be prorated to each county in which *the* district is located in the same proportion as the budget for the special education cooperative agreement of the district bears to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152."

Section 44. Section 23-5-1027, MCA, is amended to read:

**"23-5-1027. Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue and must be paid quarterly from the enterprise fund established by 23-5-1026 to the superintendent of public instruction for distribution as

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*state* equalization aid to the *public schools of Montana as provided in 20-9-343.* The net revenue is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction.

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the budget office."

Section 45. Section 90-1-108, MCA, is amended to read:

**"90-1-108. County land planning assistance.** (1) The department of commerce shall annually distribute the funds appropriated to it from the county land planning account. Each county shall be allotted $3,000. After this disbursement has been made, 40% of the balance in the account shall be apportioned to the counties according to the ratio of each county's land area to the total land area of the state and 60% of the balance shall be apportioned to the counties according to each county's portion of the total population of the state. If a multijurisdictional planning board has been established in the county, it may receive and expend part or all of the funds allocated to that county.

(2) Counties, cities, or joint planning boards receiving funds under this section shall use such funds for land planning purposes, which include but are not limited to comprehensive planning, economic development planning, and capital improvements planning.

(3) At the end of each fiscal year, every local governing body and planning agency receiving funds under this section shall provide an accounting of how the money was spent, in a form acceptable to the department of commerce. Surplus funds may be accumulated and rebudgeted for the purposes stated in subsection (2), except that funds rebudgeted by a local governing body or planning agency may not exceed the total revenue received under subsection (1) in the year immediately prior to the budget year. Any excess funds shall revert to the *state special revenue fund for state equalization aid to public schools of the state* at the end of each odd-numbered fiscal year, beginning in June *1991.*"

Section 46. Section 90-6-202, MCA, is amended to read:

**"90-6-202. Accounts established.** (1) There is within the state special revenue fund a local impact account. Moneys are payable into this account under 15-35-108. The state treasurer shall draw warrants from this account upon order of the coal board.

(2) There is within the state special revenue fund a coal area highway improvement account."

Section 47. Section 90-6-212, MCA, is amended to read:

**"90-6-212. Local impact account — disposition of loan repayments, interest, and unexpended balances.** (1) The money derived from loans made pursuant to this part, including interest thereon, must be deposited to the credit of the local impact account created in 90-6-202.

(2) The unexpended money in the local impact account must be invested by the board of investments as provided by statute. Interest and

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earnings must be deposited to the credit of the *state special revenue fund for state equalization aid to public schools of the state.*

(3) The unexpended balance in the local impact account at the end of each biennium must be deposited to the credit of the *state special revenue fund for state equalization aid to public schools of the state.*"

Section 48. Section 90-6-309, MCA, is amended to read:

"**90-6-309. Tax prepayment — large-scale mineral development.** (1) After permission to commence operation is granted by the appropriate governmental agency, and upon request of the governing body of a county in which a facility is to be located, a person intending to construct or locate a large-scale mineral development in this state shall prepay property taxes as specified in the impact plan. This prepayment shall exclude the 6-mill university levy *established under 20-25-423* and may exclude the mandatory county *levies* for the school foundation program *established in 20-9-331 and 20-9-333.*

(2) The person who is to prepay under this section *is* not obligated to prepay the entire amount established in subsection (1) at one time. Upon request of the governing body of an affected local government unit, the person shall prepay the amount shown to be needed from time to time as determined by the board.

(3) The person who is to prepay shall guarantee to the hard-rock mining impact board, through an appropriate financial institution, as may be required by the board, that property tax prepayments will be paid as needed for expenditures created by the impacts of the large-scale mineral development.

(4) When the mineral development facilities are completed and assessed by the department of revenue, they *are* subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that in each year after the start of production, the local government unit that received a property tax prepayment shall provide for repayment of prepaid property taxes in accordance with subsection (5).

(5) A local government unit that received all or a portion of the property tax prepayment under this section shall provide for tax crediting as specified in the impact plan. The tax credit allowed in any year may not, however, exceed the tax obligation of the developer for that year, and the time period for tax crediting is limited to the productive life of the mining operation."

Section 49. **Comprehensive insurance fund balance — transfer.** A district that has a balance remaining on [the effective date of this section] in the district comprehensive insurance fund shall transfer the balance to the district general fund.

Section 50. **State equalization aid levy.** (1) There is a levy of 40 mills imposed on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204. Except as provided in subsection (2), proceeds of the levy must be remitted to the state treasurer and must be

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deposited to the credit of the state special revenue fund for state equalization aid to the public schools of Montana.

(2) For the benefit of each municipality that created an urban renewal area and adopted a tax increment financing provision for the urban renewal area prior to [the effective date of this section], each year the state treasurer shall distribute to the county an amount of the state equalization levy equal to the tax increment derived by the municipality for the fiscal year ending June 30, 1989, from the levy for property taxes for school district purposes against property within the urban renewal district, less the amount of tax increment actually received by the municipality in each year as a result of the imposition of mill levies for school district purposes.

Section 51. **State and county equalization revenue — statutory appropriation.** Revenue received in support of state and county equalization under the provisions of 20-9-331, 20-9-333, and 20-9-343 is statutorily appropriated, as provided in 17-7-502, to:

(1) the superintendent of public instruction to be used for county equalization and state equalization aid for the public schools, as provided by law, and must be accounted for in accordance with generally accepted accounting principles; and

(2) counties as provided in [section 50(2)].

Section 52. **Purpose — distance learning telecommunications network — implementation — consultant.** (1) The purpose of this section is to promote the use of distance learning telecommunications technology for the purposes of enhancing educational opportunities provided to students in the Montana public school system and promoting equal access by students to those opportunities.

(2) To provide for the training and education needs of public schools, the department of administration shall retain a telecommunications engineering consultant to support the development of design criteria and specifications for statewide video networking and improvements in the use of existing voice and data networks in the state.

(3) The telecommunications engineering consultant shall:

(a) seek advice and recommendations on improvements in telecommunications within Montana from the following entities:

(i) the office of the superintendent of public instruction;

(ii) the university system;

(iii) local government and school district officials;

(iv) agencies involved in economic development;

(v) the executive, judicial, and legislative branches of state government; and

(vi) local exchange carriers providing service within the state; and

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(b) recommend and initiate network improvements during the biennium through shared use and enhancements of existing telecommunications systems, with emphasis on limiting financial commitments to the extent possible.

Section 53. **Definition.** As used in [sections 53 through 59], "committee" means the legislative oversight committee on school funding implementation created in [section 54].

Section 54. **Legislative oversight committee on school funding implementation — composition and appointment.** (1) There is a legislative oversight committee on school funding implementation.

(2) The committee consists of 11 members, including:

(a) four members of the house of representatives appointed by the speaker of the house;

(b) four members of the senate appointed by the committee on committees of the senate;

(c) the superintendent of public instruction or his designee as an ex officio nonvoting member;

(d) a member of the board of public education as an ex officio nonvoting member; and

(f) the governor or his designee as an ex officio nonvoting member.

(3) No more than two legislative members from each house may be of the same political party.

Section 55. **Term of office — vacancies.** (1) A committee member shall serve until the committee terminates as provided in [section 59].

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

Section 56. **Officers — meetings — quorum — compensation.** (1) The committee shall choose from its membership a chairman and vice chairman.

(2) The committee shall meet upon the call of the chairman or at the request of any five members.

(3) Six members constitute a quorum to transact business.

(4) A legislative member is entitled to compensation as provided in 5-2-302.

Section 57. **Duties of the committee.** The duties of the committee include but are not limited to:

(1) monitoring the implementation of school funding equalization, including:

(a) identification of any problems of implementation and options for resolving these problems;

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(b) continued analysis of school district budget and expenditure data and of improvements in school district accounting and reporting procedures; and

(c) examination of other issues related to implementation;

(2) directing the following studies of issues related to school funding equalization:

(a) school transportation equalization, including but not limited to:

(i) mechanisms to equalize transportation funding; and

(ii) analysis of issues related to the costs and efficiencies of school transportation, including reimbursement schedules, load requirements, 3-mile limit, transporting ineligible transportees, functions of the county transportation committee, and school district reporting and budgeting duties;

(b) school district capital outlay and debt service equalization, including but not limited to:

(i) analysis of school district funds and budgets for various school district capital outlay and debt service obligations; and

(ii) options for equalizing school district capital outlay and debt service obligations; and

(c) continued study of issues related to equalization, including but not limited to comprehensive insurance, uncollected taxes, tuition, student-based funding distribution methods, special education funding, administrative costs of school services, status of and approval process for isolated schools, options for reorganization or unification of school districts, and federal Public Law 81-874 revenue, especially as it pertains to revenue not linked to Native American students;

(3) ongoing analysis of revenue sources related to school funding;

(4) holding discussions with any party contemplating litigation regarding compliance with the supreme court and district court rulings on school funding equalization;

(5) reporting its findings, options for legislative consideration, and any proposed legislation to the governor and the 52nd legislature; and

(6) considering options of how the state can share teacher salary costs due to the salary change of teachers transferring from one school district to another. Currently, there is a problem of teachers transferring to other school districts. One reason is that most school districts will recognize no more than 5 years of a teacher's experience to base the new salary on, regardless of more years of teaching actually taught. This leads to hindering a teacher from transferring to another school district due to the disparity in salaries.

Section 58. **Staff assistance.** The committee may request the following governmental entities to provide staff assistance to the committee:

(1) the office of public instruction;

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(2) the governor's office of budget and program planning;

(3) the board of public education;

(4) the legislative council;

(5) the office of the legislative fiscal analyst; and

(6) the office of the legislative auditor.

Section 59. **Termination.** [Sections 53 through 58] terminate December 31, 1990.

Section 60. **Definitions.** As used in [sections 60 through 63], the following definitions apply:

(1) "County mill value per elementary ANB" or "county mill value per high school ANB" means the sum of the current taxable valuation of all property in the county plus all the taxable value of nontax revenue for the support of schools, other than Public Law 81-874 funds, for the purpose of computing guaranteed tax base aid for schools is the amount of nontax revenue received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000, divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts.

(2) "District mill value per ANB" means the current taxable valuation of all property in the district plus all the taxable value of nontax revenue for the support of schools, other than Public Law 81-874 funds, for the purpose of computing guaranteed tax base aid for schools is the amount of nontax revenue received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program schedule amount.

(3) "Guaranteed overschedule general fund budget" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 135% of the district's foundation program amount, and which excess is authorized under the provisions of [section 101] and 20-9-353.

(4) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the sum of the current taxable valuation of all property in the state plus all the taxable value of nontax revenue for the support of schools, other than Public Law 81-874 funds, for the purpose of computing guaranteed tax base aid for schools is the amount of nontax revenue received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000, divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts.

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Section 61. **Eligibility to receive guaranteed tax base aid.** (1) If the district mill value per ANB of any elementary or high school district is less than the corresponding statewide mill value per ANB, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of its guaranteed overschedule permissive amount of the general fund budget.

(2) If the county mill value per elementary ANB or high school ANB is less than the corresponding statewide mill value per ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

Section 62. **Amount of guaranteed tax base aid — reversion.** (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets of the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets of the high school districts in the county.

(3) The amount of guaranteed tax base aid per ANB that a district may receive in support of its guaranteed overschedule permissive amount of the general fund budget is the difference between the district mill value per ANB and the corresponding statewide mill value per ANB, multiplied by the number of mills levied in support of the district's guaranteed overschedule permissive amount of the general fund budget.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344.

Section 63. **Duties of superintendent of public instruction and department of revenue.** (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by June 15 of each year, with the preliminary statewide and county mill values per ANB and, by July 15 of each year, with the final statewide, district, and county mill values per ANB, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget

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and accounting information required to administer the guaranteed tax base aid;

(c) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for such aid of the counties and districts that qualify;

(d) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement [sections 60 through 63].

(3) The department of revenue shall provide the superintendent of public instruction by June 1 of each year a preliminary determination of the taxable value of property within each school district and county of the state and shall provide by July 1 of each year a final determination of the taxable values.

Section 64. Section 15-1-501, MCA, is amended to read:

**"15-1-501. Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all *money* received by him from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All *money* received from the collection of income taxes under chapter 30 of this title *must* be deposited as follows:

(a) *57% in fiscal year 1990 and 50% in fiscal year 1991,* to the credit of the state general fund;

(b) *9.8% in fiscal year 1990 and 8.7% in fiscal year 1991,* to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) *33.2% in fiscal year 1990 and 41.3% in fiscal year 1991,* to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

(3) All *money* received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, *must* be deposited as follows:

(a) 64% *in fiscal year 1990 and 61% in fiscal year 1991,* to the credit of the state general fund;

(b) 11% *in fiscal year 1990 and 10.5% in fiscal year 1991,* to the credit of the debt service account for long-range building program bonds as described in 17-5-408; and

(c) 25% *in fiscal year 1990 and 28.5% in fiscal year 1991,* to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343.

(4) The state treasurer shall also deposit to the credit of the state general fund all *money* received by him from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections *must* be deposited in the general fund."

Section 65. **Education surtax.** As part of the equalization of funding for Montana public schools and in lieu of a general sales tax, each person required to file a Montana individual income tax return shall pay, in addition to the tax liability computed as required in 15-30-103, an education surtax of 5% of the tax liability. Montana individual income tax return forms must indicate that the surtax imposed under this section is an education surtax and is assessed in lieu of a general sales tax.

Section 66. Section 7-1-2111, MCA, is amended to read:

**"7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state *must* be classified according to that percentage of the true and full valuation of the property *in the counties* upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having a taxable valuation of $50 million or over;

(b) second class—all counties having a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

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(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) the amount of interim production and new production taxes levied, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%; and

(d) the amount of value represented by new production exempted from tax as provided in 15-23-612 *multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%.*"

Section 67. Section 7-7-2101, MCA, is amended to read:

"**7-7-2101. Limitation on amount of county indebtedness.** (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property therein subject to taxation, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 *multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%,* as ascertained by the last assessment for state and county taxes previous to the incurring of *the* indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) Nothing in this section shall apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 68. Section 7-7-2203, MCA, is amended to read:

"**7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property therein, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 *multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%,* to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds which, with all outstanding bonds and warrants, will not exceed

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27.75% of the total of the taxable value of the property in the county subject to taxation, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 *multiplied by 60%*, when necessary to do so, *plus the value of any other production occurring after December 31, 1988, multiplied by 60%* for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail which will not exceed 12.5% of the taxable value of the property in the county subject to taxation.

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 69. Section 7-14-2524, MCA, is amended to read:

**"7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, *a* county *may not* issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property therein, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 *multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%.* The taxable property and the amount of interim production and new production taxes levied *must* be ascertained by the last assessment for state and county taxes prior to the issuance of *the* bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of such property, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, *plus the value of any other production occurring after December 31, 1988, multiplied by 60%* when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, shall not exceed 22.5% of the total of the taxable value of the property within the county, plus the amount of interim production and new production taxes levied divided by

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the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, *plus the value of any other production occurring after December 31, 1988, multiplied by 60%,* as ascertained by the last preceding general assessment."

Section 70. Section 7-14-2525, MCA, is amended to read:

**"7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property therein, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 *multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%,* and the board determines that the county is unable to pay *the* indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof;

(b) enter into such agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds."

Section 71. Section 7-16-2327, MCA, is amended to read:

**"7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, *has* the power and duty to contract an indebtedness in behalf of a county, upon the credit thereof, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed 13% of the total of the taxable value of the taxable property in the county, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, *plus the value of any other production occurring after December 31, 1988, multiplied by 60%,* ascertained by the last assessment for state and county taxes previous to the incurring of *the* indebtedness.

(b) No money may be borrowed on bonds issued for the purchase of lands and improving same for any such purpose until the proposition has been submitted to the vote of those qualified under the provisions of the

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state constitution to vote at such election in the county affected thereby and a majority vote is cast in favor thereof."

Section 72. Section 15-6-132, MCA, is amended to read:

**"15-6-132. Class two property — description — taxable percentage.** (1) Class two property includes the annual gross proceeds of metal mines.

(2) Class two property is taxed at 3% of its annual gross proceeds, as defined in 15-23-801."

Section 73. Section 15-23-602, MCA, is amended to read:

**"15-23-602. Statement of sales proceeds on interim production and new production.** (1) *As* provided in subsection (2), each operator or producer of *interim production or new production of* natural gas, petroleum, or other crude or mineral oil *shall* make out and deliver to the department of revenue a statement of the gross sales proceeds of *interim production or new production of* natural gas, petroleum, or other crude or mineral oil from each well owned or worked by *the* person. The gross sales proceeds *must* be determined by multiplying the units of production sold from the well times the royalty unit value of that production at the well. *The* statement *must* be in the form prescribed by the department and must be verified by the oath of the operator or producer or the manager, superintendent, agent, president, or vice-president of *the* corporation, association, or partnership. *The* statement *must* show the following:

(a) the name and address of the operator, together with a list in duplicate of the names and addresses of any persons owning or claiming any royalty interest in the production from the well or the proceeds derived from the sale *of the production*, and the amount paid or yielded as royalty to each of *those* persons during the period covered by the statement;

(b) the description and location of the well;

(c) the number of cubic feet of natural gas, barrels of petroleum or other crude or mineral oil sold from the well during the period covered by the statement; *and*

(d) the gross sales proceeds in dollars and cents or, in the case of sales between parties not acting at arm's length, the greater of the gross sales proceeds from or the fair market value of the products sold.

(2) Each operator having interim production or new production as defined in 15-23-601 shall, on or before the last day of the months of October, January, April, and July, make out and deliver to the department of revenue a statement of the gross sales proceeds of *the* interim production or new production from each well owned or worked by *the* person during the preceding calendar quarter. The statement must be in the form prescribed by the department and verified as provided in subsection (1). The statement *must* show the information required in subsections (1)(a) through (1)(d)."

Section 74. Section 15-23-603, MCA, is amended to read:

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**"15-23-603. Net proceeds — how computed.** (1) *As* provided in subsection *(2)*, the department of revenue shall calculate and compute from the returns the gross sales proceeds of the product yielded from *the* well for the year covered by the statement and shall calculate the net proceeds of the well yielded to the producer, which net proceeds *are* determined by subtracting from the gross sales proceeds *of the well* all royalty paid in cash by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid.

*(2)* For interim production or new production, net proceeds are the equivalent of the gross sales proceeds, without deduction for excise taxes, of the product yielded from *the* well for the *quarter* covered by the statement, except that in computing the total number of barrels of petroleum and other mineral or crude oil or cubic feet of natural gas produced, there *must* be deducted so much *of the product* as is used in the operation of the well from which the petroleum or other mineral or crude oil or natural gas is produced for pumping the petroleum or other mineral or crude oil or natural gas from the well to a tank or pipeline.

*(3) In the statement of sales proceeds required under 15-23-602* for lease or unitized areas from which interim or new production and other production have been sold, the number of barrels of interim and new production of oil or cubic feet of interim or new production of gas *must be segregated from and stated separately from* the number of barrels of other production of oil or cubic feet of other production of gas.

*(4)* In calculating the deduction for money expended for necessary chemical supplies needed and used in a tertiary recovery project approved by the department of revenue, as provided in 15-36-101, the department shall require that the necessary chemical supplies, which include but are not limited to carbon dioxide supplies, be amortized over a 10-year period beginning with the year in which the money was expended."

Section 75. Section 15-23-605, MCA, is amended to read:

**"15-23-605. Assessment of royalties.** The amount of royalty received *in cash paid by the operator or producer and the gross value of all royalty apportioned in kind by the operator or producer determined by using as the value of a barrel of oil or a cubic foot of gas the average selling price for the calendar year of a barrel of oil or a cubic foot of gas from the well out of which the royalty was paid must* be considered net proceeds to the recipient and *must* be assessed as follows: upon receipt of the lists or schedules setting forth the names and addresses of any persons owning or claiming royalty and the amount paid or yielded as royalty to *the* royalty owners or claimants during the year for which *the* return is made, the department of revenue shall proceed to assess and tax the same as net proceeds of mines."

Section 76. Section 15-23-607, MCA, is amended to read:

**"15-23-607. County assessors to compute taxes.** (1) Immediately after the board of county commissioners has fixed tax levies on the second

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Monday in August, the county assessor shall, *subject to the provisions of 15-23-612,* compute the taxes on net proceeds, as provided in subsection (2) *of this section,* and royalty assessments and shall deliver the book to the county treasurer on or before September 15. The county treasurer shall proceed to give full notice *of the assessments* to *the* operator and *shall* collect the *taxes as* provided by law.

(2) For interim production or new production, as defined in 15-23-601, the county assessor may not levy or assess any mills against the value of *the* interim production or new production, but shall instead levy a tax as follows:

(a) for interim production or new production of petroleum or other mineral or crude oil, 7% of net proceeds, as described in 15-23-603*(2)*; or

(b) for interim production or new production of natural gas, 12% of net proceeds, as described in 15-23-603*(2)*.

(3) The amount of tax levied in subsections (2)(a) and (2)(b), divided by the appropriate tax rate and multiplied by 60%, *must* be treated as taxable value for county bonding purposes.

*(4) The taxable value of net proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under [section 62].*

*(5)* The operator or producer *is* liable for the payment of *the* taxes *that,* except as provided in 15-16-121, *are* payable by and *must* be collected from *the* operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines. *However,* the operator may at his option withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon *the* royalty or royalty interest. After *the* withholding, any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 77. Section 15-23-703, MCA, is amended to read:

**"15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** *(1)* The county assessor shall *compute* from the reported gross proceeds from coal a tax roll *that* he shall transmit to the county treasurer on or before September 15 each year. *The county assessor may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d).* The county treasurer shall proceed to give full notice to each coal producer *of the taxes due* and to collect the taxes *as provided in 15-16-101.*

*(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).*

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*(3) The taxable value of gross proceeds for the purpose of computing guaranteed tax base aid for schools is the amount of tax received by a district in the previous year divided by the number of mills levied by the district in the previous year, multiplied by 1,000. This amount must be added to the district, county, and statewide taxable value when computing guaranteed tax base aid under [section 62].*

*(4) The county treasurer shall credit all taxes collected under this part:*

*(a) to the state and to the counties that levied mills against production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in the year 1989 in the taxing jurisdiction; and*

*(b) to school districts in the county that either levied mills against production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in 1989 in the school district."*

Section 78. Section 15-36-101, MCA, is amended to read:

**"15-36-101. Definitions and rate of tax — local government severance tax.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, except as provided in 15-36-121, each year when engaged in or carrying on *the* business in this state pay to the department of revenue *a severance tax* for the exclusive use and benefit of the state of Montana *plus a local government severance tax in lieu of a tax on net proceeds for the exclusive use and benefit of local government. The severance tax and the local government severance tax are* computed at the following rates:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), 5% of the total gross value of all the petroleum and other mineral or crude oil produced by the person, *plus the local government severance tax of 8.4% on production other than interim production and new production,* from each lease or unit; but in determining the amount of severance tax, there *must* be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) 2.65% of the total gross value of *all* natural gas produced, *plus the local government severance tax of 15.25% on natural gas production other than interim production or new production,* from each lease or unit; but in determining the amount of severance tax, there *must* be excluded from consideration all gas produced and used by the person during the year in connection with his operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there *must* also be

excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) 2.5% of the total gross value of the incremental petroleum and other mineral or crude oil produced, *plus the local government severance tax of 4.2% on production other than interim production and new production,* from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the department of revenue. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the department; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the department to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For the purpose of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the department as a tertiary recovery method.

(d) *except as provided in 15-36-121(2),* 3% of the total gross value of all the petroleum and other mineral or crude oil *production* after the first 5 barrels, *plus the local government severance tax of 4.2% on all production other than interim production and new production,* produced by a stripper well, as defined in 15-36-121, that produces more than 5 barrels a day during the period beginning April 1, 1989, and ending March 31, 1991.

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the department of revenue, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the department must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the

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combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum or other mineral or crude oil, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum or other mineral or crude oil within this state within the meaning of this section.

(4) Every person required to pay the severance tax under this section shall pay the tax in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments *are* exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts. **(Subsection (1)(d) terminates on occurrence of contingency—sec. 7, Ch. 656, L. 1987.)"**

Section 79. Section 15-36-102, MCA, is amended to read:

**"15-36-102. Quarterly payment of tax — delayed payment of local government severance tax.** *(1) Except as provided in subsection (2),* severance tax *must* be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period *must* be paid to the department of revenue within 60 days after the end of each quarterly period.

*(2) Local government severance tax must be paid in quarterly installments 1 year after the end of each quarter for which a statement is completed as required by 15-36-105."*

Section 80. Section 15-36-105, MCA, is amended to read:

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**"15-36-105. Statement to accompany payment — records — collection of tax — refunds.** (1) Each person *shall*, within 60 days after the end of each following quarter, *complete* on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum and other mineral or crude oil or cubic feet of natural gas produced or extracted by *the* person in the state during each month of *the* quarter and during the whole quarter, the average value *of the production* during each month, and the total value *of the production* for the whole quarter, together with the total amount due to the state as severance taxes *and local government severance taxes* for *the* quarter, and *shall* within such 60 days deliver *the* statement and, except as provided in *15-36-102(2) and* 15-36-121, pay to the department the amount of the taxes shown by *the* statement to be due to the state for the quarter for which *the* statement is made. *The* statement must be signed by the individual or the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company, or syndicate making the statement. Any person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all *operations* in one statement. The department shall receive and file all statements and collect and receive from *the* person making and filing a statement the amount of tax payable by *the* person, if any, as *appears in* the statement.

(2) It *is* the duty of the department to examine each of *the* statements and compute the taxes thereon, and the amount computed by the department *is* the *tax* imposed, assessed against, and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due *is* greater than the amount paid, the excess *must* be paid by the taxpayer to the department within 10 days after written notice of the amount of the deficiency *is* mailed by the department to *the* taxpayer. If the tax imposed *is* less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters or refunded if there is no subsequent tax liability.

(3) If the tax is not paid on or before the due date, there *must* be assessed a penalty of 10% of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax under this chapter is not paid when due, interest *must* be added *to the tax* at the rate of 1% a month or fraction thereof, computed on the total amount of severance tax and penalty from the due date until paid."

Section 81. Section 15-36-112, MCA, is amended to read:

**"15-36-112. Disposition of oil and gas severance taxes — calculation of unit value for local government severance tax.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each *school district.*

*(2) For purposes of the distribution of local government severance taxes collected under 15-36-101, the department shall determine the unit value of oil and gas for each school district as follows:*

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*(a) The unit value for petroleum and other mineral or crude oil for each district is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that district in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that district during 1988.*

*(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that district in calendar year 1988 by the number of cubic feet of natural gas produced in that district during 1988.*

*(3)* The severance taxes collected under this chapter are allocated as follows:

(a) *The local government severance tax* is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection *(4)(a)(ii)*;

(b) *Any* amount not allocated to the county under subsection *(3)(a)* is allocated to the state general fund.

*(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:*

*(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.*

*(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).*

*(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:*

*(i) The excess amount or shortage must be divided by the total units of production to obtain the tax value per unit of production.*

*(ii) The tax value per unit of production must be multiplied by the units of production in that taxable period in each school district that had production in that period, and this amount must be added to or subtracted from the distribution to each respective district.*

*(5)* The county treasurer shall distribute the money received under subsection *(3)(a) to the taxing jurisdictions that levied mills against production during fiscal year 1989 in the same manner that all other property tax proceeds were distributed during fiscal year 1989 in the taxing jurisdiction, except that no distribution may be made to a municipal taxing jurisdiction.*"

Section 82. Section 15-36-121, MCA, is amended to read:

"**15-36-121. Exemption from severance tax.** (1) It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state, to lessen Montana's dependence on imported natural gas, and to encourage the exploration for and development and production of natural gas, petroleum, and other mineral and crude oil within the state.

(2) All new production, as defined in 15-23-601, from a well during the 24 months immediately following the date of notification to the department of revenue that an oil well is flowing or being pumped or that a gas well has been connected to a gathering or distribution system is exempt from all of the severance tax imposed by 15-36-101, provided the notification was made after March 31, 1987, and before July 1, 1991.

(3) All the natural gas produced from any well that has produced 60,000 cubic feet or less of natural gas a day for the calendar year prior to the current year shall be taxed as provided in this section. Production must be determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365. The first 30,000 cubic feet of average daily production per well is exempt from all of the severance tax imposed by 15-36-101. Everything over 30,000 cubic feet of gas produced is taxed at 1.59% *plus a local government severance tax of 7.625%.*

(4) The first 5 barrels of average daily production from a stripper well are exempt from all of the severance tax imposed by 15-36-101, *except the local government severance tax.*

(5) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels per day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area, and by dividing the resulting quotient by 365.

(6) Notwithstanding the provisions of subsections (2) through (4), all reporting requirements under the severance tax remain in effect. **(Subsections (2) and (4) terminate on occurrence of contingency—sec. 7, Ch. 656, L. 1987.)**"

Section 83. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

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(a) Determine the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303;

(ii) the district's permissive levy amount as provided in 20-9-352; and

(iii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the *money* available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal *money* received under the provisions of Title I of Public Law 81-874 or other anticipated federal *money* received in lieu of *that* federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund cash reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated or reappropriated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537;

(vi) anticipated net proceeds taxes for interim production and new production, as defined in 15-23-601;

*(vii) anticipated revenue from local government severance taxes as provided in 15-36-112;*

*(viii) anticipated revenue from coal gross proceeds under 15-23-703;*

*(ix)* anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

*(x)* any other revenue anticipated by the trustees to be received during the ensuing school fiscal year which may be used to finance the general fund.

(c) Subtract the *money* available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from the total requirement determined in subsection (1)(a).

(2) The net general fund levy requirement determined in subsection (1)(c) *must* be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund levy requirement for the district, and a levy *must* be made by the county commissioners in accordance with 20-9-142."

Section 84. Section 20-9-331, MCA, is amended to read:

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**"20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program.** (1) *The* county commissioners of each county *shall* levy an annual basic tax of 28 mills on the *dollar* of the taxable value of all taxable property within the county, except for vehicles subject to taxation under 61-3-504(2), for the purposes of local and state foundation program support. The revenue collected from this levy *must* be apportioned to the support of the foundation programs of the elementary school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated *revenue* identified in subsection (2) *must* be subtracted from the sum of the county elementary transportation obligation and the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined *in subsection (1)(a)*, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The *revenue* realized from the county's portion of the levy prescribed by this section and the *revenue* from the following sources *must* be used for the equalization of the elementary district foundation programs of the county as prescribed in 20-9-334, and a separate accounting *must* be kept of *the revenue* by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's *accounts* for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation established by the county levy required by this section;

*(f) gross proceeds taxes from coal under 15-23-703;*

*(g)* net proceeds taxes for interim production and new production, as defined in 15-23-601, *and local government severance taxes on any other production occurring after December 31, 1988*; and

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*(h)* anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537."

Section 85. Section 20-9-333, MCA, is amended to read:

**"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program.** (1) *The* county commissioners of each county *shall* levy an annual basic special tax for high schools of 17 mills on the dollar of the taxable value of all taxable property within the county, except for vehicles subject to taxation under 61-3-504(2), for the purposes of local and state foundation program support. The revenue collected from this levy *must* be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the *sum of the* estimated *revenue* identified in subsections (2)(a) and (2)(b) *must* be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy prescribed by this section produces more revenue than is required to finance the difference determined *in subsection (1)(a)*, the county treasurer shall remit the surplus *funds* to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The *revenue* realized from the county's portion of the levy prescribed in this section and the *revenue* from the following sources *must* be used for the equalization of the high school district foundation programs of the county as prescribed in 20-9-334, and a separate accounting *must* be kept of *the revenue* by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state *money* distributed to the county as payment in lieu of property taxation established by the county levy required by this section;

*(c) gross proceeds taxes from coal under 15-23-703;*

*(d)* net proceeds taxes for interim production and new production, as defined in 15-23-601, *and local government severance taxes on any other production occurring after December 31, 1988*; and

*(e)* anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537."

Section 86. Section 20-9-352, MCA, is amended to read:

**"20-9-352. Permissive amount and permissive levy.** (1) Whenever the trustees of *a* district *consider* it necessary to adopt a general fund

budget in excess of the foundation program amount but not in excess of the maximum general fund budget amount for *the* district as established by the schedules in 20-9-316 through 20-9-321, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. *The* excess above the foundation program amount *is* known as the permissive amount, and it *must* be financed by a levy, as prescribed in 20-9-141, on the taxable value of all taxable property within the district, except for vehicles subject to taxation under 61-3-504(2), supplemented with any biennial appropriation by the legislature for this purpose. The proceeds of *the* appropriation *must* be deposited to the state special revenue fund.

(2) The district levies to be set for the purpose of funding the permissive amount are determined as follows:

(a) For each elementary school district, the county commissioners shall annually set a levy not exceeding 6 mills on all the taxable property in the district, except for vehicles subject to taxation under 61-3-504(2), for the purpose of funding the permissive amount of the district. The permissive levy in mills *is* obtained by multiplying the ratio of the permissive amount to the maximum permissive amount by 6 or by using the number of mills *that* would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537, is not sufficient to fund the permissive amount in full, the amount of the deficiency *must* be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(b) For each high school district, the county commissioners shall annually set a levy not exceeding 4 mills on all taxable property in the district, except for vehicles subject to taxation under 61-3-504(2), for the purpose of funding the permissive amount of the district. The permissive levy in mills *is* obtained by multiplying the ratio of the permissive levy to the maximum permissive amount by 4 or by using the number of mills *that* would fund the permissive amount, whichever is less. If the amount of revenue raised by this levy, plus anticipated revenue from vehicle property taxes imposed under 61-3-504(2) and 61-3-537, *plus gross proceeds taxes from coal under 15-23-703,* and plus net proceeds taxes for interim production and new production, as defined in 15-23-601, *and local government severance taxes on any other production occurring after December 31, 1988,* is not sufficient to fund the permissive amount in full, the amount of the deficiency *must* be paid to the district from the state special revenue fund according to the provisions of subsections (3) and (4) of this section.

(3) The superintendent of public instruction shall, if the appropriation by the legislature for the permissive amount for the biennium is insufficient, request the budget director to submit a request for a supplemental appropriation in the second year of the biennium. The supplemental appropriation *must* provide enough revenue to fund the permissive deficiency of the elementary and high school districts of the state. The proceeds of this appropriation *must* be deposited to the state special revenue fund and *must* be distributed to the elementary and high school districts in accordance with their entitlements as determined by the superintendent of public instruction according to the provisions of subsections (1) and (2).

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(4) Distribution under this section from the state special revenue fund *must* be made in two payments. The first payment *must* be made at the same time as the first distribution of state equalization aid is made after January 1 of the fiscal year. The second payment *must* be made at the same time as the last payment of state equalization aid is made for the fiscal year. If the appropriation is not sufficient to finance the deficiencies of the districts as determined according to subsection (2), each district will receive the same percentage of its deficiency. Surplus revenue in the second year of the biennium may be used to reduce the appropriation required for the next succeeding biennium or may be transferred to the state equalization aid state special revenue fund if revenues in that fund are insufficient to meet foundation program requirements."

Section 87. Section 20-10-144, MCA, is amended to read:

**"20-10-144. Computation of revenues and net tax levy requirements for the transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 *must* be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for *the* district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if *the* amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget *must* be reduced to *the* limitation amount and used in this determination of the schedule amount.

(2) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, *is* divided by 3 and the resulting one-third amount *is* used to determine the available state and county revenue to be budgeted on the following basis:

(a) the resulting one-third amount *is* the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442

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*must* be two-thirds of the schedule amount attributed to the transportation of special education pupils;

(b) the resulting one-third amount, except as provided for joint elementary districts in subsection (2)(e), *is* the budgeted county transportation reimbursement for elementary districts and *must* be financed by the basic county tax under the provisions of 20-9-334;

(c) the resulting one-third amount multiplied by 2 *is* the budgeted county transportation reimbursement amount for high school districts financed under the provisions of subsection (5), except as provided for joint high school districts in subsection (2)(e), and except that the county transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 *must* be one-third of the schedule amount attributed to the transportation of special education pupils;

(d) when the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated *must* be used to reduce the county financing obligation in *subsection* (2)(b) or (2)(c) and, if *the* county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a); and

(e) the county revenue requirement for a joint district, after the application of any district *money* under subsection (2)(d), *must* be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the *money* available for the reduction of property tax on the district for the transportation fund *must* be determined by totaling:

(a) anticipated federal *money* received under the provisions of Title I of Public Law 81-874 or other anticipated federal *money* received in lieu of *that* federal act; plus

(b) anticipated payments from other districts for providing school bus transportation services for *the* district; plus

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child; plus

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4); plus

(e) anticipated or reappropriated revenue from property taxes *and fees* imposed under *23-2-517, 23-2-803,* 61-3-504(2), *61-3-521,* 61-3-537, *and 67-3-204*; plus

*(f) gross proceeds taxes from coal under 15-23-703; plus*

*(g)* net proceeds taxes for interim production and new production, as defined in 15-23-601, *and local government severance taxes on any other production occurring after December 31, 1988*; plus

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*(h)* any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year which may be used to finance the transportation fund; plus

*(i)* any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the transportation fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the transportation fund. *The* cash reserve *may* not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and *is* for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund *must* be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount and, for an elementary district, adding *the* difference to the district obligation to finance one-third of the schedule amount as determined in subsection (2); and

(b) subtracting the amount of *money* available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The county levy requirement for the financing of the county transportation reimbursement to high school districts *is* computed by adding all requirements for all the high school districts of the county, including the county's obligation for reimbursements in joint high school districts.

(6) The transportation fund levy requirements determined in subsection (4) for each district and in subsection (5) for the county *must* be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district and for the county, and *the* levies *must* be made by the county commissioners in accordance with 20-9-142."

Section 88. Section 90-6-402, MCA, is amended to read:

**"90-6-402. Definitions.** As used in this part, the following definitions apply:

(1) "Affected local government unit" means a local government unit that will experience a need to increase services or facilities as a result of the commencement of large-scale mineral development or within which a large-scale mineral development is located in accordance with an impact plan adopted pursuant to 90-6-307.

(2) "Board" means the hard-rock mining impact board established in 2-15-1822.

(3) "Mineral development employee" means a person who resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

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(4) "Mineral development student" means a student whose parent or guardian resides within the jurisdiction of an affected local government unit as a result of employment with a large-scale mineral development or its contractors or subcontractors.

(5) "Jurisdictional revenue disparity" means property tax revenues resulting from a large-scale hard-rock mineral development that are inequitably distributed among affected local government units as finally determined by the board in an approved impact plan.

(6) "Large-scale mineral development", for the purposes of this part, is defined in 90-6-302.

(7) "Local government unit", for the purposes of this part, means a county, municipality, or school district.

(8) "Taxable valuation" of a mineral development means the total of the gross proceeds taxable percentage specified in 15-6-132(2) when added to the taxable percentages of real property, improvements, machinery, equipment, and other property classified under Title 15, chapter 6, part 1."

Section 89. Section 20-9-501, MCA, is amended to read:

**"20-9-501. Retirement fund.** (1) The trustees of any district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers' retirement system shall be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system shall be calculated in accordance with 19-3-801. The district may levy a special tax to pay its contribution to the public employees' retirement system under the conditions prescribed in 19-3-204. The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance shall be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

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(i) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes *and fees* imposed under *23-2-517, 23-2-803,* 61-3-504(2), *61-3-521,* 61-3-537, *and 67-3-204*;

(ii) net proceeds taxes for interim production and new production, as defined in 15-23-601, *and local government severance taxes on any other oil and gas production occurring after December 31, 1988*;

*(iii) coal gross proceeds taxes under 15-23-703; and*

*(iv)* any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(b) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (3)(a) from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements;

(b) reduce the total retirement fund levy requirements of elementary school districts and high school districts by the amount available in state retirement equalization aid as calculated and distributed under the provisions of 20-9-532; and

(c) report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set such county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements shall be prorated to each county in which such district is located in the same proportion as the budget for the special education cooperative agreement of the district bears

to the total budget of the cooperative. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152. **(Subsection (4)(b) effective July 1, 1988—sec. 8, Ch. 635, L. 1987.)"**

Section 90. Section 15-31-121, MCA, is amended to read:

**"15-31-121. Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 shall be 6 ¾% of all net income for the taxable period. The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 shall be 7% of all taxable net income for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $50.

(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax, *5%* of the tax liability, and the amount so derived is the amount due the state."

Section 91. Section 17-5-408, MCA, is amended to read:

**"17-5-408. Percentage of income, corporation license, and cigarette tax pledged.** (1) (a) The state pledges and appropriates and directs to be credited as received to the debt service account *9.8% for fiscal year 1990 and 8.7% for fiscal year 1991* of all money received from the collection of the individual income tax and 11% *for fiscal year 1990 and 10.5% for fiscal year 1991* of all money, except as provided in 15-31-702, received from the collection of the corporation license and income tax as provided in 15-1-501, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4).

(b) No more than the percentages described in subsection (1)(a) of such tax collections may be pledged for the purpose of 17-5-403(2). The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(2) The state pledges and appropriates and directs to be credited to the debt service account 70.89% of all money received from the collection of the excise tax on cigarettes which is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed, and assessed by law for that purpose, including the tax levied, imposed, and assessed by 16-11-202. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions

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authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 92. Section 17-5-704, MCA, is amended to read:

**"17-5-704. Investment of funds.** (1) Money in the coal severance tax bond fund, the coal severance tax permanent fund, and the coal severance tax income fund must be invested in accordance with the investment standards for coal severance tax funds except as provided in subsection (2). Income and earnings from all funds must be transferred to and retained in the coal severance tax income fund until appropriated by the legislature.

(2) Except as provided in section 1, Chapter 634, Laws of 1989, beginning on July 1, *1990*, the legislature shall appropriate 15% of the income and earnings from all funds to be deposited to the *state equalization aid account* each year."

Section 93. Section 1, Chapter 634, Laws of 1989, is amended to read:

"Section 1. **Appropriation.** There is appropriated from the income and earnings on the coal severance tax permanent fund that otherwise would be appropriated to the *state equalization aid account* under 17-5-704 the amount of $2 million to the medical research facility projects account established in [section 2] for the biennium ending June 30, 1991. The money is to be used to match federally appropriated funds on at least a four-to-one federal-to-state matching basis for construction and startup operating costs for medical research facility projects in the state. The Montana science and technology development board shall administer the appropriation."

Section 94. **Repealer.** (1) Sections 15-23-604, 15-23-615, and 15-23-616, MCA, are repealed on passage and approval of [this act].

(2) Sections 20-9-105, 20-9-352, 20-9-513, 20-9-531, 20-9-532, and 90-6-211, MCA, are repealed July 1, 1990.

Section 95. **Appropriation.** (1) There is appropriated from the general fund $353,950 for the biennium ending June 30, 1991, to the superintendent of public instruction to establish standard accounting and reporting practices in all Montana public school districts and to implement [this act].

(2) There is appropriated from the general fund $20,000 to the legislative council for the biennium ending June 30, 1991, for use by the committee established in [section 54].

(3) There is appropriated from the general fund to the department of administration $200,000 for the fiscal year ending June 30, 1990, to retain a telecommunications engineering consultant and to support development of and improvements in telecommunications networks in Montana as provided in [section 52].

(4) There is appropriated from the general fund to the department of administration $300,000 for the biennium ending June 30, 1991, to be used

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for education network implementation and improvements if a 50% match in funds or equipment is available from other sources.

(5) Any money remaining in the education trust fund account, established in 90-6-202(3), and the vocational-technical center and adult basic education account, as established in 20-9-513, as of June 30, 1990, is appropriated to the superintendent of public instruction for the fiscal year ending June 30, 1991, for state equalization aid to the public schools.

(6) There is appropriated for fiscal year 1991 from the coal severance tax income fund 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704(2).

Section 96. **Study of guaranteed tax base — purpose.** (1) During the 1989-90 interim, the revenue oversight committee is directed to study the concept of a guaranteed tax base for school funding purposes.

(2) The purpose of the study is to assess the advisability of using a guaranteed tax base to fund, for elementary and secondary schools:

(a) transportation costs;

(b) capital expenditures;

(c) comprehensive insurance costs;

(d) retirement costs;

(e) general fund obligations; or

(f) any other obligation of elementary or secondary schools in Montana.

(3) The revenue oversight committee is further directed to coordinate its research, share its findings and recommendations, and generally cooperate with the legislative oversight committee on school funding implementation established in [section 54].

(4) The revenue oversight committee shall report its findings, conclusions, and options for consideration to the 52nd legislature.

Section 97. **Codification instruction.** (1) [Sections 50, 51, 60 through 63, and 66] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20 apply to [sections 50, 51, 60 through 63, and 66].

(2) [Section 65] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, apply to [section 65].

Section 98. **Effective dates — rules.** (1) (a) [Sections 1 through 12, 14 through 26, 28 through 36, 37(1) and (3) through (5), 38 through 44, 49 through 51, 60 through 64, and 101] are effective July 1, 1990.

(b) The superintendent of public instruction may, prior to July 1, 1990, adopt rules and conduct training necessary to implement [section 22].

(2) [Sections 13, 27, 37(2), 45 through 48, 52 through 59, 65 through 94, 96, and this section] are effective on passage and approval.

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Section 99. **Applicability.** (1) [Sections 35, 36, and 50] apply retroactively, within the meaning of 1-2-109, to all taxable years beginning after December 31, 1989.

(2) Except as provided in subsection (4), [section 64] applies to all tax revenue recorded on or after July 1, 1989, without regard to the time the tax accrued.

(3) [Sections 66 through 88] apply retroactively, within the meaning of 1-2-109, to net proceeds taxes, severance taxes, and local government taxes on oil and gas, other than interim production and new production, produced after December 31, 1988.

(4) [Sections 65 and 90] apply to tax years and tax revenues collected on or after January 1, 1990.

(5) [Sections 45 through 48] apply retroactively, within the meaning of 1-2-109, to July 1, 1989.

(6) [Section 13] applies to any enlarged district that was created by order in school fiscal year 1989 for operation in school fiscal year 1990.

Section 100. **Coordination instruction.** If House Bill No. 16 is passed and approved, the appropriation in [section 95(1)] is reduced by the amount of money appropriated in House Bill No. 16.

Section 101. **Overschedule permissive amount of general fund budget — permissive levy.** Whenever the trustees of any district determine it necessary to adopt a general fund budget in excess of the foundation program amount for that district, the trustees shall adopt a resolution stating the reasons and purposes for exceeding the foundation program amount. This amount is the "permissive amount" and may not exceed [the equivalent of the percent to be determined that is 112% of FY 1988 district general fund and insurance fund expenditures] of the foundation program amount. It must be financed by the district and established as provided in 20-9-142, by any guaranteed tax base aid for which the district may be eligible, and by other revenue available to the district for other than foundation program support.

Section 102. **Termination.** [Sections 65 and 90 (from senate committee on education amendments regarding individual income and corporate income and license surtaxes)] terminate January 1, 1991.

Approved August 11, 1989.

# CHAPTER NO. 12

[HB 62]

AN ACT ESTABLISHING A JOINT SELECT COMMITTEE ON WORKERS' COMPENSATION; DEFINING THE POWERS AND DUTIES OF THE COMMITTEE; APPROPRIATING FUNDS FOR

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USE BY THE COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, last year, the actuary of the state workers' compensation plan No. 3 determined that, as of June 30, 1988, an unfunded liability of $157.3 million existed in the state fund of the Montana workers' compensation insurance system; and

WHEREAS, the actuary now projects that the unfunded liability in the state fund will increase to $215.2 million by June 30, 1989; and

WHEREAS, this increase in the unfunded liability in the state fund has occurred despite legislation enacted in 1987 to reform the Montana workers' compensation insurance system; and

WHEREAS, current plans to reduce the unfunded liability would require substantial increases in workers' compensation insurance premiums, which many businesses cannot afford because their rates are already too high; and

WHEREAS, other options need to be explored for reducing or eliminating the unfunded liability in the state fund; and

WHEREAS, the state fund should be neither more nor less than self-supporting and completely solvent; and

WHEREAS, there is a need to ensure that employers have a cost-effective system for insuring their workers' compensation liability; and

WHEREAS, current problems of the state fund are detrimental to the business climate of the state.

THEREFORE, the Legislature of the State of Montana finds it appropriate to establish a joint select committee on workers' compensation.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Definitions.** As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the joint select committee on workers' compensation established in [section 2].

(2) "State fund" means the state compensation insurance fund referred to in 39-71-2301.

Section 2. **Joint select committee on workers' compensation.** (1) There is a joint select committee on workers' compensation.

(2) The committee consists of eight members who must be appointed as follows:

(a) two members of the house of representatives appointed by the speaker of the house;

(b) two members of the house of representatives appointed by the house minority leader;

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(c) two members of the senate appointed by the president of the senate; and

(d) two members of the senate appointed by the senate minority leader.

Section 3. **Term of office — vacancies.** (1) A member of the committee shall serve until January 1, 1991.

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

Section 4. **Officers — meetings — quorum — compensation.** (1) The committee shall choose from its membership a chairman and vice chairman.

(2) The committee shall meet upon the call of the chairman or at the request of a majority of its members.

(3) Five members constitute a quorum for the transaction of business.

(4) Members of the committee are entitled to compensation and expenses as provided in 5-2-302.

Section 5. **Staff assistance — committee support.** (1) The legislative council shall provide staff assistance to the committee.

(2) The office of the legislative auditor; the department of labor and industry; and the board of directors, the executive director, and management staff of the state fund shall assist and cooperate with the committee as may be required for the committee to carry out its duties.

Section 6. **Duties of committee.** The committee shall undertake and complete a thorough study of the workers' compensation insurance program under plans No. 1 and 2 and plan No. 3, the state fund. In conducting this study, the committee shall:

(1) hold public hearings and gather information from private citizens, state government officials, and other interested persons concerning the problems affecting the state fund;

(2) review the laws and policies governing workers' compensation;

(3) examine the current costs, benefits, and operation of the state fund, including the establishment of rates and classifications for coverage under the state fund;

(4) study all matters affecting the costs of and premium rates charged for workers' compensation insurance;

(5) determine reasons for the increasing unfunded liability in the state fund;

(6) analyze the projected costs of operating the state fund;

(7) evaluate the future projected unfunded liability in the state fund;

(8) determine the specific revenue requirements to operate the state fund and to eliminate the unfunded liability;

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(9) identify options to reduce costs, lower rates, and ensure the future solvency of the state fund;

(10) study the feasibility and advisability of selling or abolishing the state fund; and

(11) report its findings and present options for legislative consideration to the 52nd legislature by no later than October 1, 1990, and, if appropriate, prepare legislation to implement any of these options.

Section 7. **Powers of committee.** In performing the duties described in [section 6], the committee may:

(1) investigate and examine any issue it determines to be pertinent to the conduct of its business;

(2) request assistance and information from any state agency;

(3) subpoena witnesses, books, records, and other documents;

(4) administer oaths to witnesses in any matter under examination by the committee;

(5) request preparation of bills and resolutions as may be required for presentation at any meeting of the committee; and

(6) hire an independent consultant to audit the information and procedures used to determine the financial liabilities and revenue requirements for operation of the state fund.

Section 8. **Appropriation.** There is appropriated from the workers' compensation tax account, established in 39-71-2504, to the legislative council for the biennium ending June 30, 1991, the sum of $40,000 to be used by the committee on workers' compensation to conduct the study required by [this act].

Section 9. **Effective date.** [This act] is effective on passage and approval.

Section 10. **Termination.** [This act] terminates July 1, 1991.

Approved July 11, 1989.

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# APPROPRIATIONS

ENACTED BY THE

## Fifty-First Legislature

## IN SPECIAL

## SESSION

## STATE OF MONTANA

## June 19 Through July 14, 1989

## HOUSE BILL NO. 15

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FIRST SPECIAL SESSION OF THE FIFTY-FIRST LEGISLATURE, CONVENING JUNE 19, 1989, AND FOR OTHER RELATED PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Operations appropriation.** The following amounts are appropriated from the general fund for fiscal years 1989 and 1990 for the operation of the first special session of the fifty-first legislature, convening June 19, 1989:

| | |
|---|---|
| House of Representatives | $215,395 |
| Senate | $122,822 |
| Legislative Council | $112,830 |

Section 2. **Appropriations report appropriation.** The following amount is appropriated from the general fund to the office of the legislative fiscal analyst for fiscal year 1990 for printing and distribution of the appropriation report for the regular and first special session of the fifty-first legislature:



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Legislative Fiscal Analyst $12,000

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved June 27, 1989.

# HOUSE BILL NO. 36

AN ACT TO APPROPRIATE REVENUE RECEIVED IN THE STATE TRAFFIC EDUCATION ACCOUNT TO THE OFFICE OF PUBLIC INSTRUCTION FOR DISTRIBUTION; TO APPROPRIATE REVENUE ACCUMULATED IN THE ADVANCED DRIVERS EDUCATION ACCOUNT TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION; AND PROVIDING AN EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Appropriation.** (1) All revenue received in the state traffic education account under the provisions of 20-7-504 is appropriated to be distributed as provided in 20-7-506.

(2) There is appropriated from the state special revenue fund $25,000 for the fiscal year ending June 30, 1990, to the superintendent of public instruction for equipment replacement and site improvements at the advanced drivers education facility in Lewistown. The appropriation from the federal special revenue fund for the fiscal year ending June 30, 1990, to the superintendent of public instruction is reduced by $25,000.

Section 2. **Effective date.** [This act] is effective July 1, 1989.

Approved July 11, 1989.

# HOUSE BILL NO. 64

AN ACT SUPPLEMENTING THE APPROPRIATION CONTAINED IN HOUSE BILL NO. 15 OF THE FIRST SPECIAL SESSION TO PROVIDE MONEY FOR THE CONTINUED OPERATION OF THE FIRST SPECIAL SESSION OF THE FIFTY-FIRST LEGISLATURE, CONVENING JUNE 19, 1989, AND FOR OTHER RELATED PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

*Be it enacted by the Legislature of the State of Montana:*

Section 1. **Operations appropriation.** The following amounts are appropriated from the general fund for fiscal years 1989 and 1990 to supplement the amounts appropriated by House Bill No. 15 for the operation of the first special session of the fifty-first legislature, convening June 19, 1989:

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| | |
|---|---|
| House of Representatives | $101,161 |
| Senate | $42,246 |

Section 2. **Reallocation of money.** The legislative council staff shall reallocate money appropriated by House Bill No. 65 as enacted by the 51st legislature in regular session to account for additional costs of the first special session of the 51st legislature. Reallocation may not exceed the following:

| | |
|---|---|
| House of Representatives | $60,000 |
| Senate | $50,000 |
| Legislative Council | $60,000 |

Section 3. **Round trip authorized.** Enactment of this bill constitutes authorization by the legislature for one additional round trip under the provisions of 5-2-301(5)(b).

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved July 24, 1989.

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# RESOLUTIONS

ENACTED BY THE

## Fifty-First Legislature

## IN SPECIAL

## SESSION

## STATE OF MONTANA

June 19 Through July 14, 1989

## HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING TO CONGRESS THEIR SUPPORT OF SERIOUS CONSIDERATION OF AN AMENDMENT TO THE UNITED STATES CONSTITUTION THAT WOULD PROHIBIT DESECRATION OF THE FLAG OF THE UNITED STATES OF AMERICA.

WHEREAS, the United States Supreme Court recently held that the State of Texas could not convict a person under its criminal laws for desecrating the flag of the United States of America; and

WHEREAS, the flag is a unique symbol of our nation, people, and national identity; and

WHEREAS, hundreds of thousands of citizens of the United States of America have died in numerous wars fighting for what the flag stands for; and

WHEREAS, the State of Montana had a higher percentage of male citizens serving in the armed forces in World War I and World War II than any other state; and



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WHEREAS, approximately one-seventh of the population of the State of Montana are veterans; and

WHEREAS, action on an amendment to the United States Constitution that would prohibit desecration of the flag is pending in the Congress of the United States; and

WHEREAS, it may be appropriate for Congress to take such action.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States be informed that the Senate and the House of Representatives of the State of Montana support serious consideration of the adoption of an amendment to the Constitution of the United States of America that would prohibit desecration of the flag of the United States of America.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation, who are urged to enter this resolution into the record of the Senate and the record of the House of Representatives of the Congress of the United States of America.

Passed July 11, 1989.

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# CODE SECTIONS AFFECTED

| Title-Ch.-Sec. | Action | Chapter |
|---|---|---|
| 2-7-504 | amended | 1 |
| | amended | 11 |
| 5-20-101—106 | enacted | 3 |
| 7-1-2111 | amended | 11 |
| 7-4-102 | amended | 2 |
| 7-7-2101 | amended | 11 |
| 7-7-2203 | amended | 11 |
| 7-14-2524, 2525 | amended | 11 |
| 7-16-2327 | amended | 11 |
| 15-1-101 | amended | 10 |
| 15-1-111 | enacted | 10 |
| 15-1-501 | amended | 11 |
| 15-6-132 | amended | 11 |
| 15-6-136—138 | amended | 10 |
| 15-6-139, 140 | repealed | 10 |
| 15-6-146 | repealed | 10 |
| 15-10-402 | amended | 10 |
| | amended | 11 |
| 15-10-412 | amended | 5 |
| | amended | 6 |
| | amended | 7 |
| | amended | 11 |
| 15-23-602, 603 | amended | 11 |
| 15-23-604 | repealed | 11 |
| 15-23-605 | amended | 11 |
| 15-23-607 | amended | 11 |
| 15-23-615, 616 | repealed | 11 |
| 15-23-703 | amended | 11 |
| 15-24-1102, 1103 | amended | 10 |
| 15-30-106 | enacted | 11 |
| 15-31-101 | amended | 9 |
| 15-31-121 | amended | 11 |
| 15-31-502 | amended | 9 |
| 15-31-510 | enacted | 9 |
| 15-35-108 | amended | 11 |
| 15-36-101, 102 | amended | 11 |
| 15-36-105 | amended | 11 |
| 15-36-112 | amended | 11 |
| 15-36-121 | amended | 11 |
| 17-3-213 | amended | 11 |
| 17-5-408 | amended | 11 |
| 17-5-704 | amended | 11 |
| 17-7-502 | amended | 10 |
| | amended | 11 |
| 20-3-106 | amended | 11 |
| 20-3-205 | amended | 11 |
| 20-3-324 | amended | 11 |
| 20-3-331 | amended | 11 |
| 20-5-305 | amended | 11 |
| 20-5-312 | amended | 11 |
| 20-6-401 | amended | 11 |
| 20-6-506 | amended | 11 |
| 20-6-603 | amended | 11 |
| 20-6-608 | amended | 11 |
| 20-7-414 | amended | 11 |



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| | | |
|---|---|---|
| 20-7-422 | amended | 11 |
| 20-7-431 | amended | 11 |
| 20-7-1001 | enacted | 11 |
| 20-9-104 | amended | 11 |
| 20-9-105 | repealed (7/1/90) | 11 |
| 20-9-141 | amended | 11 |
| 20-9-145 | enacted | 11 |
| 20-9-201 | amended | 1 |
| | amended | 11 |
| 20-9-212 | amended | 11 |
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